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Superior Court of California
County of Los Angeles

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individually, and on behalf of all other similarly situated
current and former employees of Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SALVADOR OCHOA, individually, and on
behalf of all other similarly situated current
and former employees of Defendants

Plaintiff,

vs.

CKE RESTAURANTS HOLDINGS, INC.,
a Delaware Corporation; CARL'S JR.
RESTAURANTS LLC, a Delaware
Corporation; CARL'S JR. FUNDING LLC,
a Delaware Corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: BC623041

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Provide Meal Periods
2. Failure to Provide Rest Periods
3. Failure to pay minimum and straight time wages;
4. Failure to pay overtime compensation;
5. Failure to provide and maintain accurate statements, accrued sick leave notices and payroll records;
6. Failure to permit employees to inspect or copy payroll records;
7. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and
8. Private Attorneys General Act: Action for Civil Penalties [Cal. Lab. Code §§ 2698-2699.5]

DEMAND FOR JURY TRIAL

COPIA

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Plaintiff Salvador Ochoa ("Plaintiff"), on behalf of himself and all other similarly situated current and former employees of CKE Restaurants Holdings, Inc., Carl's Jr. Restaurants LLC and Carl's Jr. Funding LLC, complains and alleges as follows:

INTRODUCTION & GENERAL ALLEGATIONS

1. Plaintiff brings this action against CKE Restaurants Holdings, Inc., Carl's Jr. Restaurants LLC and Carl's Jr. Funding LLC, and DOES 1 through 50 (hereinafter also collectively referred to as "DEFENDANTS") for California Labor Code violations stemming from DEFENDANTS' failure to provide all timely meal and rest period, failure to pay for all hours worked, including minimum wage, straight time and overtime pay, failure to furnish accurate statements and maintain required records, and failure to notify and provide sick leave, in accordance with California Labor Code §§ 201-204, 226, 226.7, 245-250, 510, 512, 1174, 1174.5, 1194, 1194.1, 1197, 1198.5 and Industrial Welfare Commission ("IWC") Order No. 1-2001.

2. Plaintiff brings the First through Seventh Causes of Action individually and as a class action on behalf of himself and current and former employees of DEFENDANTS (hereinafter collectively referred to as "PLAINTIFFS" or "the Class," and defined more fully below).

3. Plaintiff brings the Eighth Cause of Action as a representative action under the California Private Attorney General Act ("PAGA") to recover civil penalties that are owed to the State of California and to the past and present employees of DEFENDANTS.

4. PLAINTIFFS and the Class are current and former non-exempt employees of DEFENDANTS that worked for DEFENDANTS in the State of California, for a period of time within the four (4) years preceding the filing of this action.

5. Plaintiff Salvador Ochoa is a resident of California, County of San Diego. At all relevant times herein, Plaintiff was employed by DEFENDANTS in the State of California as a non-exempt, hourly employee.

6. Throughout the time period involved in this case, DEFENDANTS have wrongfully failed to provide Plaintiff and the Class with timely, adequate, and duty-free meal periods, by way of specific classwide company policies and practices including but not limited to their shift and meal period scheduling policies and practices, and the lack of express meal period policies. DEFENDANTS regularly required Plaintiff and the Class to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, meal period for every five hours of work, or without compensating Plaintiff and the Class for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. DEFENDANTS did not inform Plaintiff and the Class of their right to take a meal period by the end of the fifth hour of work. DEFENDANTS did not inform Plaintiff and the Class of their right to take a second meal break for shifts longer than 10 hours. DEFENDANTS did not inform Plaintiff and the Class of their right, for shifts of more than 10 hours, to take a second meal break by the end of the 10th hour. Moreover, DEFENDANTS did not have legally compliant policies or practices providing adequate and duty-free meal periods for Plaintiff and the Class, nor did DEFENDANTS have legally compliant policies or practices regarding the timing of meal periods. DEFENDANTS also did not have any policies or practices to record whether the Plaintiff and the Class were taking their required meal periods as required by IWC Wage Order No. 1-2001 (7).

7. Throughout the time period involved in this case, DEFENDANTS have wrongfully failed to authorize and permit Plaintiff and the Class to take timely and duty-free rest periods. DEFENDANTS regularly required Plaintiff and the Class to work in excess of four consecutive hours a day without DEFENDANTS authorizing and permitting them to take a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Class for rest periods that were not authorized or permitted. DEFENDANTS did not properly inform Plaintiff and the Class of their right to take a rest period every four hours of work (or major fraction of four hours). Moreover, DEFENDANTS did not have legally compliant policies or practices

1 permitting or authorizing timely rest periods for Plaintiff and the Class. DEFENDANTS also
2 did not have any policies or practices to verify whether Plaintiff and the Class were receiving
3 their required rest periods.

4 8. DEFENDANTS, as a matter of practice and policy, did not furnish Plaintiff and
5 members of the Class with accurate itemized wage statement that accurately show total hours
6 worked by Plaintiff and the Class, gross wages earned, net wages earned, sick leave accrued
7 and other information required by Labor Code § 226(a). DEFENDANTS knowingly and
8 intentionally failed to do so because, among other things, the wage statements did not
9 accurately state the total hours worked, the overtime rates, the gross wages earned, and the net
10 wages earned. As a result of these violations of section 226(a), the Plaintiff and the Class
11 suffered injury because, among other things: (a) the violations led them to believe that they
12 were not entitled to be paid daily minimum wages, overtime wages, meal period premium
13 wages, and rest period premium wages, even though they were entitled; (b) the violations led
14 them to believe that they had been paid the minimum, overtime, meal period premium, and rest
15 period premium wages to which they were entitled, even though they had not been; (c) the
16 violations led them to believe they were not entitled to be paid minimum, overtime, meal
17 period premium, and rest period premium wages at the correct California rate even though they
18 were; (d) the violations led them to believe they had been paid minimum, overtime, meal
19 period premium, and rest period premium wages at the correct California rate even though they
20 had not been; (e) the violations hindered them from determining the amounts of minimum,
21 overtime, meal period premium, and rest period premium wages owed to them; (f) in
22 connection with their employment before and during this action, and in connection with
23 prosecuting this action, the violations caused them to have to perform mathematical
24 computations to determine the amounts of wages owed to them, computations they would not
25 have to make if the wage statements contained the required accurate information; (g) by
26 understating the wages truly due them, the violations caused them to lose entitlement and/or
27 accrual of the full amount of Social Security, disability, unemployment, and other
28

governmental benefits; (h) the wage statements inaccurately understated the wages, hours, and wages rates and failed to disclose sick leave accrued to which Plaintiff and the Class were entitled, and Plaintiffs and the Class were paid less than the wages and wage rates to which they were entitled. Thus, Plaintiff and the Class are owed the amounts provided for in Labor Code § 226(e).

THE PARTIES TO EACH CAUSE OF ACTION

A. Plaintiff

9. Plaintiff Salvador Ochoa resides in the State of California, County of Los Angeles. DEFENDANTS employed Plaintiff as a cashier at their locations at 695 H. Street, Chula Vista, California and 1487 E. H Street, Chula Vista, California.

10. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

11. Plaintiff is informed and believes, and based upon that information and belief alleges, that DEFENDANTS are all corporations authorized to conduct business, and actually conducting business throughout the State of California including the County of San Diego. DEFENDANTS were the employers of Plaintiff and the current and/or former employer of the putative Class.

12. Plaintiff does not know the true names or capacities of the persons or entities sued herein as DOES 1-50, inclusive, and therefore sues said Defendants by such fictitious names. Each of the DOE Defendants was in some manner legally responsible for the damages suffered by Plaintiff and the Class as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

13. At all times mentioned herein, the Defendants named as DOES 1-50, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction

of, and/or injured a significant number of the Plaintiffs and the Class in the State of California.

14. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other employees described in the class definitions below, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, or aided and abetted the conduct of all other Defendants.

CLASS ACTION ALLEGATIONS

15. Plaintiff brings this action individually as well as on behalf of each and all other persons similarly situated, and seeks class certification under California Code of Civil Procedure § 382.

16. All claims alleged herein arise under California law for which PLAINTIFFS seek relief authorized by California law.

17. The proposed Class consists of and is defined as:

All persons employed by Defendants to work in any hourly paid job position as either a temporary or permanent employee, in California at any time beginning May 1, 2013. For purposes of this definition, "Defendants" means CKE Restaurants Holdings, Inc., Carl's Jr. Restaurants, LLC or Carl's Jr. Funding, LLC and any of the fictitiously named defendants (Does 1 through 50).

18. Plaintiff reserves the right to establish other sub-classes as appropriate.

19. At all material times, Plaintiff was a member of the Class.

20. Plaintiff undertakes this action for the benefit of all Class members.

21. There is a well-defined community of interest in the litigation and the Class is readily ascertainable:

- (a) Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire Class is unknown to Plaintiff

at this time, however, the Class is estimated to be greater than 200 individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class member with whom there is a shared, well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all Class members' claims as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class member with whom there is a shared, well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no conflicts with or interests antagonistic to any Class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: A class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
- 2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
- 3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

4) The difficulties likely to be encountered in the management of a class action.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

22. There are common questions of law and fact as to the Class (and each subclass, if any) that predominate over questions affecting only individual members, including without limitation, whether, as alleged herein, DEFENDANTS have:

- (a) Failed to provide meal periods and pay meal period premium wages to Class members;
- (b) Failed to authorize and permit rest periods and pay rest period premium wages to Class members;
- (c) A policy of never paying premiums for missed meal or rest periods;
- (d) Failed to pay Class members for all hours worked, including minimum wages, straight time wages, and overtime wages; and
- (e) Failed to provide Class members with accurate wages statements.

23. This Court should permit this action to be maintained as a class action pursuant to California Code Of Civil Procedure § 382 because:

- (a) The questions of law and fact common to the Class predominate over any question affecting only individual members;
- (b) A class action is superior to any other available method for the fair and

- 1 efficient adjudication of the claims of the members of the Class;
- 2 (c) The members of the Class are so numerous that it is impractical to bring
- 3 all members of the class before the Court;
- 4 (d) Plaintiff, and the other members of the Class, will not be able to obtain
- 5 effective and economic legal redress unless the action is maintained as a
- 6 class action;
- 7 (e) There is a community of interest in obtaining appropriate legal and
- 8 equitable relief for the statutory violations, and in obtaining adequate
- 9 compensation for the damages and injuries for which DEFENDANTS
- 10 are responsible in an amount sufficient to adequately compensate the
- 11 members of the Class for the injuries sustained;
- 12 (f) Without class certification, the prosecution of separate actions by
- 13 individual members of the class would create a risk of:
- 14 1) Inconsistent or varying adjudications with respect to individual
- 15 members of the Class which would establish incompatible
- 16 standards of conduct for DEFENDANTS; and/or
- 17 2) Adjudications with respect to the individual members which
- 18 would, as a practical matter, be dispositive of the interests of
- 19 other members not parties to the adjudications, or would
- 20 substantially impair or impede their ability to protect their
- 21 interests, including but not limited to the potential for exhausting
- 22 the funds available from those parties who are, or may be,
- 23 responsible DEFENDANTS; and
- 24 (g) DEFENDANTS have acted or refused to act on grounds generally
- 25 applicable to the Class, thereby making final injunctive relief appropriate
- 26 with respect to the class as a whole.
- 27 24. Plaintiff contemplates the eventual issuance of notice to the proposed members
- 28

of the Class that would set forth the subject and nature of the instant action. DEFENDANTS' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff would contemplate the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

FIRST CAUSE OF ACTION

**(Against All Defendants for Failure to Provide Meal Periods)
[Cal. Lab. Code §§ 226.7, 512, and IWC Wage Order No. 1-2001]**

25. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in this Complaint.

26. Under California law, DEFENDANTS have an affirmative obligation to relieve the Plaintiff and the Class of all duty in order to take their first daily meal periods no later than fifth hour of work in a workday, and to take their second meal periods no later than the tenth hour of work in the workday.

27. Despite these legal requirements, DEFENDANTS regularly failed to provide Plaintiff and the Class with both meal periods as required by California law.

28. Under California law, Plaintiff and the Class are entitled to be paid one hour of additional wages for each instance he or she was not provided with all required meal period(s).

29. DEFENDANTS regularly failed to pay Plaintiff and the Class the additional wages to which they were entitled for meal periods and that were not provided.

30. As a result, DEFENDANTS are liable to Plaintiff and the Class for one hour of additional wages for each work day for a meal period that was not provided.

31. By failing to keep adequate time records required by Labor Code § 1174(d), DEFENDANTS have made it difficult to calculate the full extent of meal period premium wage compensation due to Plaintiff and the Class Members.

32. California Labor Code section 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period

applicable to this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates required by law, including meal period premium wages for each meal period that was not provided. However, during all such times, DEFENDANTS systematically failed and refused to pay Plaintiff and the Class all such wages due, and failed to pay those wages twice a month.

33. DEFENDANTS are also liable to Plaintiff and the Class for the civil penalties provided for in Labor Code § 558 because of the violations alleged in this cause of action.

SECOND CAUSE OF ACTION

**(Against All Defendants for Failure to Provide Rest Periods)
[Cal. Lab. Code §§ 226.7, and IWC Wage Order No. 1-2001]**

34. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in this Complaint.

35. DEFENDANTS are required by California law to authorize and permit breaks of uninterrupted, net 10-minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). That is, the required number of rest breaks is equal to the number of work hours divided by four, and if the work time is not evenly divided by four, if the remaining fractional part is two hours or less it is rounded down, and if it is more than two hours, it is rounded up. Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. If the work time is nine hours, the employee is still entitled to only two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

36. Despite these legal requirements, DEFENDANTS failed to authorize Plaintiff and the Class to take all timely, net, 10-minute rest breaks owed to them, regardless of whether employees worked more than 4 hours in a workday.

37. Under California law, Plaintiff and the Class are entitled to be paid one hour of premium wages rate for each instance he or she was not provided with all required rest break(s).

38. DEFENDANTS regularly failed to pay Plaintiff and the Class the additional wages to which they were entitled for rest breaks DEFENDANTS failed authorize and permit. As a result, DEFENDANTS are liable to Plaintiff and the Class for one hour of additional wages for each work day when they did not receive a rest break.

39. California Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates required by law, including rest break premium wages for each rest break that was not authorized and permitted. However, during all such times, DEFENDANTS systematically failed and refused to pay Plaintiff and the Class all such wages due, and failed to pay those wages twice a month.

40. DEFENDANTS are also liable to Plaintiff and the Class for the civil penalties provided for in Labor Code § 558 because of the violations alleged in this cause of action.

THIRD CAUSE OF ACTION

**(Against all Defendants for Failure to Pay Minimum Wage and Straight Time Wages)
[Cal. Lab. Code §§ 204 and 1194, and IWC Wage Order No. 1-2001]**

41. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in this Complaint.

42. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

43. At all relevant times herein mentioned, DEFENDANTS knowingly failed to pay Plaintiff and the other members of the Class compensation for all hours they worked.

44. Accordingly, Plaintiff and the other members of the Class are entitled to recover straight time wages for all non-overtime hours worked for DEFENDANTS.

45. By and through the conduct described above, the Plaintiff and the other members of the Class, have been deprived of their rights to be paid wages earned by virtue of their employment with DEFENDANTS.

46. By virtue of the DEFENDANTS' unlawful failure to pay additional compensation to the Class for their non-overtime hours worked without pay, the Class has suffered, and will continue to suffer, damages in amounts which are presently unknown to the Class, but which exceed the jurisdictional minimum of this Court, and which will be ascertained according to proof at trial.

47. By failing to keep adequate time records required by Labor Code § 1174(d), DEFENDANTS have made it difficult to calculate the full extent of compensation due Plaintiff and the Class members.

48. Pursuant to California Labor Code § 1194.2, Plaintiff and the Class are entitled to recover liquidated damages (double damages) for DEFENDANTS' failure to pay minimum wages.

49. California Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff and the Class members were entitled to be paid twice a month at rates required by law, including minimum wages and straight time wages. However, during all such times, DEFENDANTS systematically failed and refused to pay Plaintiff and the Class members all such wages due, and failed to pay those wages twice a month.

50. Plaintiff and the Class are also entitled to seek recovery of all unpaid wages, interest, and reasonable attorneys' fees and costs pursuant to Cal. Labor Code §§ 218.5 and 218.6.

51. DEFENDANTS are also liable to the Class for the civil penalties provided for in Labor Code § 558 because of the violations alleged in this cause of action.

FOURTH CAUSE OF ACTION

**(Against all Defendants for Failure to Pay Overtime Wages)
[Cal. Lab. Code §§ 510, 1194 and 1198 and IWC Wage Order No. 1-2001]**

52. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in this Complaint.

53. California Labor Code § 510 provides that employees in California shall not be

employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

54. California Labor Code §§ 1194 and 1198 provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, California Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

55. At all times relevant hereto, Plaintiff and the members of the Class have worked more than eight, and at times more than twelve, hours in a workday, as employees of DEFENDANTS. Further, at all times relevant hereto, Plaintiff and the members of the Class have been paid on an hourly basis.

56. At all times relevant hereto, DEFENDANTS failed to pay the Plaintiff and the other members of the Class overtime compensation for the hours they have worked in excess of the maximum hours permissible by law as required by California Labor Code § 510 and 1198. Plaintiff and the Class are regularly required to work overtime hours.

57. By virtue of DEFENDANTS' unlawful failure to pay additional, premium rate compensation to Plaintiff and the Class for their overtime hours worked, Plaintiff and members of the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to them but which exceed the jurisdictional minimum of this Court and which will be ascertained according to proof at trial.

58. By failing to keep adequate time records required by Labor Code § 1174(d), DEFENDANTS have made it difficult to calculate the full extent of overtime compensation due Plaintiff and the Class members.

59. California Labor Code section 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff and the Class members were entitled to be paid twice a month at rates required by law, including overtime wages. However, during all such

1 times, DEFENDANTS systematically failed and refused to pay Plaintiff and the Class
2 members all such wages due, and failed to pay those wages twice a month.

3 60. Plaintiff and the other members of the Class also request recovery of overtime
4 compensation according to proof, interest, attorneys' fees and costs pursuant to California
5 Labor Code §§ 218.5 and 1194(a), as well as the assessment of any statutory penalties against
6 DEFENDANTS, in a sum as provided by the California Labor Code and/or other statutes.
7 Further, Plaintiff and the other members of the Class, are entitled to seek and recover
8 reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5 and 1194.

9 **FIFTH CAUSE OF ACTION**

10 **(Against all Defendants for Failure to Provide Accurate Statements**
11 **and Required Accrued Sick Leave and Maintain Required Records)**
12 **[Cal. Lab. Code § 226 and IWC Wage Order No. 1-2001]**

13 61. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
14 material allegations set out in this Complaint.

15 62. At all material times set forth herein, California Labor Code § 226(a) provides
16 that every employer shall furnish each of his or her employees an accurate itemized wage
17 statement in writing showing nine pieces of information, including: (1) gross wages earned, (2)
18 total hours worked by the employee, (3) the number of piece-rate units earned and any
19 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
20 that all deductions made on written orders of the employee may be aggregated and shown as
21 one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
22 paid, (7) the name of the employee and the last four digits of his or her social security number
23 or an employee identification number other than a social security number, (8) the name and
24 address of the legal entity that is the employer, and (9) all applicable hourly rates in effect
25 during the pay period and the corresponding number of hours worked at each hourly rate by the
26 employee.

27 63. At all material times set forth herein, the Healthy Workplaces, Healthy Families
28 Act of 2014, Labor Code §§ 245 -250 requires employers to provide paid sick leave to
employees who works in California for 30 or more days within a year from the beginning of

employment. Employees, including part-time and temporary employees, earn at least one hour of paid leave for every 30 hours worked.

64. DEFENDANTS have violated the Healthy Workplaces, Healthy Families Act of 2014, Labor Code § 246(h) requires an employer to provide an employee with written notice that sets forth the amount of paid sick leave available, or accrued paid time off an employer provides in lieu of sick leave on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

65. DEFENDANTS have intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify the gross wages earned by Plaintiffs and the members of the Class, the failure to list the true "total hours worked by the employee," the failure to list the true net wages earned, the failure to state the sick leave hours accrued, and the failure to list the name and address of the legal entity(s) that employ Plaintiffs and the Class.

66. As a result of DEFENDANTS' violation of California Labor Code § 226(a), Plaintiff and the members of the Class have suffered injury and damage to their statutorily-protected rights.

67. Specifically, Plaintiff and the members of the Class have been injured by DEFENDANTS' intentional violation of California Labor Code § 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under California Labor Code § 226(a).

68. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as a result of having to bring this action to attempt to obtain correct wage information following DEFENDANTS' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

69. Plaintiff and Class members are entitled to recover from DEFENDANTS the

greater of their actual damages caused by DEFENDANTS' failure to comply with California Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

70. Plaintiff and the members of the Class are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(g).

SIXTH CAUSE OF ACTION

**(Against all Defendants for Failure to Permit
Employees to Inspect or Copy Personnel and Payroll Records)
[Cal. Lab. Code §§ 226 and IWC Wage Order 9)**

71. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in this Complaint.

72. California Labor Code § 226 requires employers to permit current or former employees or their representative access to their payroll records and to allow them to inspect or copy them within twenty-one (21) calendar days that the request is made. However, during all relevant times, DEFENDANTS systematically failed and refused to provide Plaintiff and the Class said records requested or within the required time from the time of request.

73. DEFENDANTS are liable to Plaintiff and the Class for the civil penalties provided for in Labor Code § 226(f) because of the violations alleged in this cause of action.

SEVENTH CAUSE OF ACTION

**(Against all Defendants for Violation of
California Business & Professions Code §§ 17200, et seq.)**

74. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations and Causes of Action set out in this Complaint.

75. DEFENDANTS, and each of them, are "persons" as defined under Business & Professions Code § 17201.

76. DEFENDANTS' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Class members, and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of

Code of Civil Procedure § 1021.5.

77. DEFENDANTS' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code § 17200, et seq.

78. A violation of California Business & Professions Code §§ 17200, et seq. may be predicated on the violation of any state or federal law. All of the acts described herein as violations of, among other things, the California Labor Code, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business and Professions Code §§ 17200, et seq.

Failing to Pay Minimum and Straight Time Wages

79. DEFENDANTS' failure to pay minimum and straight time wages constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, et seq.

Failing to Provide Meal Periods

80. DEFENDANTS' failure to provide meal periods as required under Cal. Lab. Code §§ 226.7, 512, and IWC Wage Order No. 1-2001 constitutes unlawful and/or unfair activity prohibited by Business and Professions Code § 17200, et seq.

81. DEFENDANTS' failure to pay premiums for missed, late or short meal periods as required under Cal. Lab. Code §§ 226.7, 512, and IWC Wage Order No. 1-2001 constitutes unlawful and/or unfair activity prohibited by Business and Professions Code § 17200, et seq. *Safeway, Inc. v. Superior Court of Los Angeles County* (2015) 238 Cal.App.45th 1138.

82. DEFENDANTS' failure to provide the required compensation guarantee and enhanced enforcement with their policy of noncompliance under §§ 226.7, 512, and IWC Wage Order No. 1-2001 constitutes unlawful and/or unfair activity prohibited by Business and

Professions Code § 17200, et seq. *Safeway, Inc. v. Superior Court of Los Angeles County* (2015) 238 Cal.App.45th 1138.

83. DEFENDANTS' failure to provide the required statutory protections constitutes unlawful and/or unfair activity prohibited by Business and Professions Code § 17200, et seq. *Safeway, Inc. v. Superior Court of Los Angeles County* (2015) 238 Cal.App.45th 1138.

Failing to Provide Rest Periods

84. DEFENDANTS' failure to provide rest periods as required under Cal. Lab. Code §§ 226.7 and IWC Wage Order No. 1-2001 constitutes unlawful and/or unfair activity prohibited by Business and Professions Code § 17200, et seq.

85. DEFENDANTS' failure to pay premiums for missed, late or short rest periods as required under Cal. Lab. Code §§ 226.7 and IWC Wage Order No. 1-2001 constitutes unlawful and/or unfair activity prohibited by Business and Professions Code § 17200, et seq. *Safeway, Inc. v. Superior Court of Los Angeles County* (2015) 238 Cal.App.45th 1138.

86. DEFENDANTS' failure to provide the required compensation guarantee and enhanced enforcement under § 226.7 and IWC Wage Order No. 1-2001 constitutes unlawful and/or unfair activity prohibited by Business and Professions Code § 17200, et seq. *Safeway, Inc. v. Superior Court of Los Angeles County* (2015) 238 Cal.App.45th 1138.

87. DEFENDANTS' failure to provide required statutory protections constitutes unlawful and/or unfair activity prohibited by Business and Professions Code § 17200, et seq. *Safeway, Inc. v. Superior Court of Los Angeles County* (2015) 238 Cal.App.45th 1138.

Failing to Pay Overtime

88. DEFENDANTS' failure to pay overtime compensation and other benefits in violation of Cal. Lab. Code §§ 510, 1197, 1198, Penal Code §§ 484 and 532 (obtaining labor through false pretenses), constitutes unlawful and/or unfair activity prohibited by Business and

Professions Code § 17200, et seq.

**Failing to Provide and Maintain Accurate
Statements, Accrued Sick Leave Notices and Payroll Records**

89. DEFENDANTS' failure to provide accurate itemized wage statements in accordance with Cal. Lab. Code §§ 226 and 245-250, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, et seq.

Failing to Permit Employees to Inspect or Copy Personnel and Payroll Records

90. DEFENDANTS' failure to permit current or former employees or their representative access to their payroll records and to allow them to inspect or copy them, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, et seq.

91. By and through their unfair, unlawful and/or fraudulent business practices described herein, DEFENDANTS have obtained valuable property, money and services from Plaintiff and all persons similarly situated, and have deprived Plaintiff and all persons similarly situated of valuable rights and benefits guaranteed by law.

92. Plaintiff and members of the Class suffered monetary injury as a direct result of DEFENDANTS' wrongful conduct.

93. Plaintiff, individually and on behalf of members of the Class, is entitled to and seeks such relief as may be necessary to disgorge money and/or property which the DEFENDANTS have wrongfully acquired, or of which Plaintiffs have been deprived by means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the members of the Class are not obligated to establish individual knowledge of the wrongful practices of DEFENDANTS in order to recover restitution.

94. Plaintiff, individually and on behalf of the Class, is further entitled to and does seek a declaration that the above described business practices are unfair, unlawful and/or fraudulent as well as injunctive relief restraining DEFENDANTS and each of them, from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

95. Plaintiff and the Class have no plain, speedy and/or adequate remedy at law to redress the injuries, which the Class members suffered as a consequence of the DEFENDANTS' unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff and the Class, have suffered and will continue to suffer irreparable harm unless DEFENDANTS, and each of them, are restrained from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

96. Plaintiff also alleges that if DEFENDANTS are not enjoined from the conduct set forth herein above, they will continue to avoid paying the appropriate taxes, insurance and other withholdings.

97. Pursuant to California Business & Professions Code §§ 17200, et seq., Plaintiff and the Class are entitled to restitution of the lost benefits and compensations and the wages withheld and retained by DEFENDANTS during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring DEFENDANTS to pay all outstanding compensations and wages due to Plaintiff and the Class members; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

EIGHTH CAUSE OF ACTION

**(Private Attorneys General Act: Action for Civil Penalties)
[Cal. Lab. Code §§ 2698-2699.5]**

98. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations and Causes of Action set out in this Complaint.

99. Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations thereunder: "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or

1 herself and other current and former employees.”

2 100. Labor Code § 2699.3(a) states, “A civil action by an aggrieved employee
3 pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of provision listed in
4 Section 2699.5 shall commence only after the following requirements have been met: (1) The
5 aggrieved employee or representative shall give written notice by certified mail to the Labor
6 and Workforce Development Agency and the employer of the specific provisions of this code
7 alleged to have been violated, including the facts and theories to support the alleged violation.
8 (2)(A) The agency shall notify the employer and the aggrieved employee or the representative
9 by certified mail that it does not intend to investigate the alleged violation within 30 calendar
10 days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of
11 that notice or if no notice is provided within 33 calendar days of the postmark date the notice
12 given pursuant to paragraph (1), the aggrieved employee may commence a civil action
13 pursuant to Section 2699.”

14 101. Plaintiff has exhausted his administrative remedies pursuant to Labor Code §
15 2699.3. On February 24, 2016, he gave written notice by certified mail to the Labor and
16 Workforce Development Agency and DEFENDANTS of the specific provisions of the Labor
17 Code that DEFENDANTS have violated against Plaintiff and all current and former
18 employees, including the facts and theories to support the violations. More than 33 days have
19 elapsed since the mailing of Plaintiff’s February 24, 2016 letter and the Labor and Workforce
20 Development Agency has not indicated that it intends to investigate Defendants’ Labor Code
21 violations discussed in the amended notice. Accordingly, Plaintiff may commence a civil
22 action to recover penalties for herself and other current and former employees under Labor
23 Code § 2699 pursuant to § 2699.3.

24 102. By way of this cause of action, under Labor Code § 2699(f) pursuant to Labor
25 Code § 2699.3, Plaintiff seeks penalties for himself and for similarly aggrieved employees of
26 DEFENDANTS for the violations of the Labor Code described above.

27 103. In addition, Plaintiff seeks penalties for himself and for similarly aggrieved
28

employees of DEFENDANTS under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall keep total hours worked in the payroll period and applicable rates of pay.

104. During the time period of employment for Plaintiff and the similarly aggrieved employees, DEFENDANTS failed to maintain records pursuant to the Labor Code and IWC Orders by failing to maintain accurate records showing meal periods, and accurate records showing when employees begin and end each work period. DEFENDANTS' failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the aggrieved employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in DEFENDANTS' records. Therefore, Plaintiff and the aggrieved employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to DEFENDANTS. As a direct result, Plaintiff and the aggrieved employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses as well as attorney's fees in seeking to compel DEFENDANTS to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of DEFENDANTS' knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the aggrieved employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

105. Labor Code §§ 2699 and 2699.5 sets forth penalties to be awarded against DEFENDANTS for violating the California Labor Code violations Plaintiff has alleged in this

complaint, including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512, 558, 1174.5, 1197.1, and 2699.

106. Plaintiff is entitled to an award of civil penalties as set forth in Labor Code § 2699 on behalf of herself and similarly aggrieved employees of DEFENDANTS. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

107. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

PRAYER FOR RELIEF

Plaintiff, individually, and on behalf of all others similarly situated, pray for relief and judgment against DEFENDANTS, jointly and severally, as follows:

Class Certification

- That this action be certified as a class action;
- That Plaintiff be appointed as the representative of the Class; and
- That counsel for Plaintiff be appointed as Class Counsel.

As to the First Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated Labor Code §§ 226.7 and 512, and the IWC Wage Orders;
- For general unpaid wages and such general and special damages as may be appropriate;
- For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
- For reasonable attorneys' fees and for costs of suit incurred herein; and
- For such other and further relief as the Court may deem equitable and appropriate.

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As to the Second Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated Labor Code § 226.7 and the IWC Wage Orders;
- For general unpaid wages and such general and special damages as may be appropriate;
- For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
- For reasonable attorneys' fees and for costs of suit incurred herein; and
- For such other and further relief as the Court may deem equitable and appropriate

As to the Third Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated Labor Code §§ 204 and 1194;
- For general unpaid wages and such general and special damages as may be appropriate;
- For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
- For liquidated damages;
- For reasonable attorneys' fees and for costs of suit incurred herein; and
- For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and Class members;
- For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
- For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

- For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code § 1194(a); and
- For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated the record keeping provisions of California Labor Code §§ 226(a) and 245-250 and applicable IWC Wage Orders as to Plaintiff and the Class members, and willfully failed to provide accurate itemized wage statements and accrued sick leave or paid time off notices thereto;
- For all actual, consequential and incidental losses and damages, according to proof;
- For statutory penalties pursuant to California Labor Code § 226(e);
- For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(g);
- For reasonable attorneys' fees and for costs of suit incurred herein; and
- For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated the record keeping provisions of California Labor Code §§ 226(b), §§ 245-250, 1198.5 and applicable IWC Wage Orders as to Plaintiff and the Class members, and willfully failed to permit employees to inspect or copy personnel and payroll records thereto;
- For all actual, consequential and incidental losses and damages, according to proof;
- For statutory penalties pursuant to California Labor Code § 226(f);
- For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(h);
- For reasonable attorneys' fees and for costs of suit incurred herein; and
- For such other and further relief as the Court may deem equitable and appropriate.

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As to the Seventh Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated California Business and Professions Code §§ 17200, et seq.:
- By failing to provide Plaintiff and Class members with meal periods, failing to authorize and permit required rest periods, failing to provide all compensation due to them, failing to provide accurate itemized wage statements, and failing to pay Plaintiff's and class members' wages timely as required by California Labor Code §§ 201, 202, 203, 245-250;
- Through DEFENDANTS' policy of never paying premium payments for missed, short or late meal periods;
- Through DEFENDANTS' policy of never paying premium payments for missed, short or late rest periods;
- For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;
- For restitution of all Class members' loss of statutory protections under California Labor Codes § 226.7, 512 and IWC Wage Order No. 1-2001, *Safeway, Inc. v. Superior Court of Los Angeles County* (2015) 238 Cal.App.4th 1138;
- For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from DEFENDANTS and determined to have been wrongfully acquired by DEFENDANTS as a result of violations of California Business & Professions Code §§ 17200 et seq.;
- For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;
- For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code § 17200, et seq.; and
- For such other and further relief as the Court may deem equitable and appropriate.

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As to the Eighth Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated California Labor Code §§ 2699, et seq. as to Plaintiff and similarly aggrieved employees by failing to provide meal periods; failing to authorize and permit rest periods; failing to pay for all hours worked (including minimum wages and overtime wages); failing to furnish accurate wage statements including accrued sick leave notices; and failing to provide and maintain payroll records; and failing to permit employees to inspect or copy payroll records;
- For all actual, consequential and incidental losses and damages according to proof;
- For all civil penalties pursuant to California Labor Code §§ 2699, et seq. and all other applicable Labor Code provisions;
- For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code § 2699; and
- For such other and further relief as the Court may deem equitable and appropriate.

As to all Causes of Action

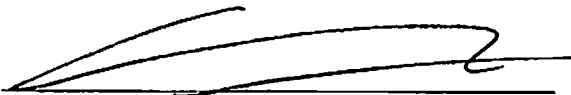
- For any additional relief that the Court deems just and proper.

Dated: September 8, 2016

Respectfully submitted,

RASTEGAR LAW GROUP, APC

By:


 Farzad Rastegar
 Candace Kwon
 Attorneys for Plaintiff Salvador Ochoa and
 all other similarly situated employees of
 Defendants

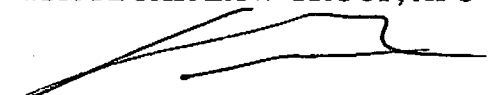
DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands a jury trial with respect to all issues triable of right by jury.

Dated: September 8, 2016

Respectfully submitted,

RASTEGAR LAW GROUP, APC

By: 

Farzad Rastegar
Candace Kwon
Attorneys for Plaintiff Salvador Ochoa and
all other similarly situated employees of
Defendants