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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION**

22CV398739

CASIMIRO DONATO, an individual,

Plaintiff,

v.

MAYA EATS, an entity of unknown form;
ONE STOP KITCHEN, an entity of unknown
form; VIGNESH KANDASAMY, an
individual; VIJAYARAJ GOPINATH, an
individual; and DOES 1-25, inclusive,

Defendants.

Case No. _____

**COMPLAINT FOR:
(1) WRONGFUL TERMINATION AND
RACIAL DISCRIMINATION;
(2) UNLAWFUL RETALIATION;
(3) FAILURE TO PROVIDE MEAL
PERIODS;
(4) FAILURE TO PROVIDE REST
PERIODS;
(5) FAILURE TO REIMBURSE;
(6) FAILURE TO PAY OVERTIME
WAGES;
(7) FAILURE TO PROVIDE ACCURATE
WAGE STATEMENTS;
(8) FAILURE TO PAY WAGES ON TIME,
WAITING TIME PENALTIES; and
(9) UNFAIR BUSINESS PRACTICES**

Plaintiff CASIMIRO DONATO alleges as and for cause of action against Defendants, and
each of them, as follows:

PARTIES

1. Plaintiff Casimiro Donato is an individual residing in Santa Clara County,
California. Plaintiff performed the work for Defendants that is the subject of this action primarily
in Santa Clara County.

1 2. Defendant Maya Eats is an entity of unknown form doing business in Santa Clara
2 County, California.

3 3. Defendant One Stop Kitchen is an entity of unknown form doing business in Santa
4 Clara County, California.

5 4. Defendant Vignesh Kandasamy is an individual who, on information and belief,
6 resides in Santa Clara County, California. On information and belief, Mr. Kandasamy is a founder
7 and principal of Maya Eats and One Stop Kitchen, and he and Mr. Gopinath are the individuals
8 primarily responsible for the conduct alleged herein.
9

10 5. Defendant Vijayaraj Gopinath is an individual who, on information and belief,
11 resides in Santa Clara County, California. On information and belief, Mr. Gopinath is a founder
12 and principal of Maya Eats and One Stop Kitchen, and he and Mr. Kandasamy are the individuals
13 primarily responsible for the conduct alleged herein.
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15 6. Plaintiff is informed and believes and, based upon such information and belief,
16 alleges that each of the Defendants designated as Does 1 through 25, inclusive, is contractually,
17 intentionally, negligently, legally, or in some manner responsible for the events and occurrences
18 more fully described below and which proximately caused injuries and/or damages to Plaintiff as
19 alleged. Plaintiff is unaware of the true names and capacities of those Defendants sued herein as
20 Does 1 through 25, inclusive, and therefore sues such Defendants by fictitious names. Plaintiff
21 will seek leave to amend this Complaint to set forth the true names and capacities of those
22 Defendants when they have been ascertained.
23

24 7. Plaintiff is informed and believes and, based on such information and belief,
25 alleges that at all times mentioned each of the Defendants was the agent and/or employee of the
26 remaining Defendants, and was at all times acting within the scope and purpose of this agency
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1 and/or employment and with the consent and permission of the remaining Defendants.

2 8. Plaintiff is further informed and believes and, based on such information and belief,
3 alleges that at all times relevant hereto that each of the Defendants acted as agent or alter ego of or
4 for the other Defendants such that each is liable for the wrongdoings described herein. The entity
5 Defendants do not appear to be registered legal entities in California and consequently appear to
6 be alter egos of the individual Defendants.
7

8 **FACTS**

9 9. Defendants operate a virtual restaurant and ghost kitchen business in and around
10 Sunnyvale, California. On information and belief, Defendants employ more than ten employees in
11 California. Plaintiff was employed by Defendants as a misclassified independent contractor from
12 approximately December 2021 to March 2022, performing the work of a non-exempt hourly
13 employee, namely, as a cook and delivery driver. Throughout his employment, Plaintiff and other
14 employees were and are misclassified as independent contractors, and treated as such, despite the
15 fact that they legally were and are employees, and are entitled to all the rights and protections of
16 employees under California law.
17

18 10. Throughout his employment, Plaintiff routinely worked twelve or more hours a
19 day, seven days a week. He was never provided time off from work. He was paid a lump sum
20 that was not based on his hours worked. He was not paid any overtime premiums for hours in
21 excess of eight hours in a day, forty hours in a workweek, or for seven consecutive days in a
22 workweek.
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24 11. Plaintiff was paid under the table. Defendants never provided Plaintiff with
25 accurate, itemized wage statements as required by Labor Code §226. Defendants never paid
26 payroll taxes or took payroll deductions from his paycheck.
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1 12. Throughout his employment, Plaintiff was denied timely and uninterrupted meal
2 and rest periods. Because Defendants failed to provide timely meal and rest periods, they owe
3 Plaintiff one hour of compensation for each day worked without a timely meal period and one
4 hour of compensation for each day worked with a missed rest period. Defendants failed to pay
5 Plaintiff those wages when they were due and failed to pay Plaintiff those wages upon
6 termination.
7

8 13. During the relevant time period, Defendants required Plaintiff to use his own
9 mobile phone and personal vehicle for work purposes. Defendants failed to compensate Plaintiff
10 for the expense of using his personal phone and vehicle, despite the fact that they were expenses
11 incurred at the instruction of Defendants and for the benefit of Defendants' business. It was not
12 unusual for Plaintiff to drive over a hundred miles per day for work.
13

14 14. During the relevant time period, Defendants failed to pay employees all wages
15 owed at the time of separation or within 72 hours of said members' resignation and/or termination.
16

17 15. Defendants harassed Plaintiff and took advantage of him because of his race.
18 Plaintiff was the only Latino working for Defendants. On information and belief, Defendants and
19 their other employees are Indian or of Indian heritage. Defendants made repeated derogatory
20 comments about Defendant's Mexican heritage. They would treat other Indian employees more
21 favorably than Plaintiff and refuse to speak English around him so that he would be excluded from
22 business-related conversations. Throughout his entire employment, Plaintiff was not allowed time
23 off. Yet another Indian employee who had worked only two days received a day off upon request.
24 When Plaintiff confronted Defendants, they told him Mexicans are used to working long hours.
25

26 16. When Plaintiff complained about his treatment, wrongful misclassification,
27 excessive work schedule and workload, and Defendants' failure to reimburse him, Defendants
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1 abruptly terminated him. Prior to his termination, Plaintiff had no warnings, write-ups, or any
2 other negative performance reviews.

3
4 **FIRST CAUSE OF ACTION**

5 **(Wrongful Termination and Discrimination Based on Race;**

6 **Violation of Gov. Code §12940(a))**

7 17. Plaintiff incorporates the allegations above as though they were fully set forth
8 herein.

9 18. Defendants harassed Plaintiff, created and knowingly allowed a hostile work
10 environment for Plaintiff to fester, and ultimately terminated Plaintiff because of his race and/or
11 national origin and his refusal to quietly submit to racial harassment in violation of Gov. Code
12 §12940(a).

13
14 19. Defendants and their officers, directors, and managing agents intended to cause
15 Plaintiff injury and/or willfully and consciously disregarded Plaintiff's rights. The conduct
16 described above was authorized, ratified, and/or personally committed by the Defendant entities'
17 principals, officers, directors, and managing agents.

18
19 20. As a proximate result of Defendants' conduct, Plaintiff has suffered, and will
20 continue to suffer, a loss of wages and other employment benefits, a loss of future earning
21 capacity, a loss of emotional tranquility, a loss of enjoyment of life, and a loss of reputation, and
22 has been damaged in an amount to be proved at trial, which amount exceeds the jurisdictional
23 minimum of this court.

24
25 **SECOND CAUSE OF ACTION**

26 **(Whistleblower Retaliation; Violation of Labor Code §1105.2)**

27 21. Plaintiff incorporates the allegations above as though they were fully set forth
28

herein.

22. As detailed above, Plaintiff complained to his supervisors about his unlawful treatment at work and Defendants' Labor Code violations. Plaintiff reasonably believed that the matters he was disclosing constituted a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

23. Instead of addressing those concerns, Defendants took retaliatory adverse employment actions against Plaintiff, including terminating him.

24. Defendants and their principals, officers, directors, and managing agents intended to cause Plaintiff injury and/or willfully and consciously disregarded Plaintiff's rights. The conduct described above was authorized, ratified, and/or personally committed by Defendants' principals, officers, directors, and managing agents.

25. As a result of Defendants' wrongful conduct, Plaintiff has suffered, and will continue to suffer, a loss of wages and other employment benefits, a loss of future earning capacity, a loss of emotional tranquility, a loss of enjoyment of life, and a loss of reputation, and has been damaged in an amount to be proved at trial, which amount exceeds the jurisdictional minimum of this court.

THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods;

Violation of Labor Code §§226.7, 512, I.W.C. Wage Order No. 5-2001)

26. Plaintiff incorporates the allegations above as though they were fully set forth herein.

27. Plaintiff typically worked in excess of ten hours a day without being provided a 30-minute, uninterrupted, off-duty meal period within the first five hours or a second 30-minute, uninterrupted, off-duty meal period within the first ten hours. Indeed, Plaintiff was typically not provided any meal periods at all.

28. On these occasions, Defendants failed to pay Plaintiff one additional hour of pay at

1 his regular rate of compensation.

2 **FOURTH CAUSE OF ACTION**

3 **(Failure to Provide Rest Periods;**

4 **Violation of Labor Code §§226.7, I.W.C. Wage Order No. 5-2001)**

5 29. Plaintiff incorporates the allegations above as though they were fully set forth
6
7 herein.

8 30. Plaintiff typically worked in excess of ten hours in a workday without being
9 authorized or permitted to take any paid rest periods.

10 31. On these occasions, Defendants failed to pay Plaintiff one additional hour of pay at
11 his regular rate of compensation.
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13 **FIFTH CAUSE OF ACTION**

14 **(Failure to Reimburse Employment-Related Expenses; Violation of Labor Code §2802)**

15 32. Plaintiff incorporates the allegations above as though they were fully set forth
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17 herein.

18 33. As set forth above, Defendants required Plaintiff to use his personal mobile phone
19 and personal vehicle for work purposes, which he often had to drive more than one hundred miles
20 a day.

21 34. Defendants failed to compensate Plaintiff for the expense of purchasing and
22 maintaining his phone and vehicle, or for gas or mileage for the vehicle, or for a service plan for
23 the phone, despite the fact that they were expenses incurred at the instruction of Defendants and
24 for the benefit of Defendants' business.
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26 35. As a result, Plaintiff has been damaged in an amount to be proved at trial.
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SIXTH CAUSE OF ACTION

(Failure to Pay Overtime Wages;

Violation of Labor Code §§510, 1194, I.W.C. Wage Order No. 5-2001)

36. Plaintiff incorporates the allegations above as though they were fully set forth herein.

37. As set forth above, Plaintiff regularly worked in excess of eight hours a day, forty hours a week, and/or on the seventh consecutive day in a workweek for a rate of pay without any overtime pay.

38. Defendants failed to pay Plaintiff for the overtime hours worked, and failed to pay Plaintiff any overtime premiums for the overtime hours worked.

SEVENTH CAUSE OF ACTION

(Failure to Provide Accurate Wage Statements; Violation of Labor Code §226)

39. Plaintiff incorporates the allegations above as though they were fully set forth herein.

40. Defendants failed to furnish Plaintiff with an accurate itemized statement in writing on the regular paydays showing gross wages earned, total hours worked, net wages earned, and all applicable hourly rates of pay in effect during the pay period, and the corresponding number of hours worked at each hourly rate.

41. Defendants knew that they were required by law to furnish accurate itemized statements in writing and intentionally failed to furnish accurate statements to Plaintiff on the regular paydays.

42. Plaintiff suffered injury from Defendants' failure to provide accurate itemized

1 statements in writing on the regular paydays. Plaintiff could not promptly and easily determine
2 the amount of gross or net wages earned, the total number of hours worked, or the applicable rates
3 in effect for the corresponding hours.

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5 **EIGHTH CAUSE OF ACTION**

6 **(Failure to Pay Wages on Time; Violation of Labor Code §§201-204)**

7 43. Plaintiff incorporates the allegations above as though they were fully set forth
8 herein.

9 44. Defendants willfully failed to pay Plaintiff all wages owed both (1) at the time they
10 were due and (2) upon his termination from employment. To date, Defendants have not paid those
11 wages.
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13 **NINTH CAUSE OF ACTION**

14 **(Unfair Business Practices, Violation of Bus. & Prof. Code §17200)**

15 45. Plaintiff incorporates the allegations above as though they were fully set forth
16 herein.
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18 46. Defendants' conduct, as set forth above, violates the California Unfair Competition
19 Law, Bus. & Prof. Code §17200, *et seq.* ("UCL"). Defendants' conduct constitutes unlawful,
20 unfair, or fraudulent business acts or practices in that they willfully misclassify employees as
21 independent contractors, fail to pay employees for hours worked, fail to pay overtime wages, fail
22 to provide meal and rest breaks, fail to provide accurate wage statements, fail to reimburse
23 employees for work expenses, require employees to work seven consecutive days, and the like.
24

25 47. As a result of Defendants' unlawful, unfair, and fraudulent conduct, Plaintiff has
26 suffered injury in fact.

27 48. Plaintiff is informed and believes, and on that basis alleges, that Defendants
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1 continue to engage in the unlawful, unfair, and fraudulent practices as alleged herein, and that they
2 will continue to do so unless enjoined by this court.

3 49. Pursuant to Bus. & Prof. Code §17203, Plaintiff seeks declaratory and injunctive
4 relief for Defendants' unlawful, unfair, and fraudulent conduct, and to recover restitution.
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7 WHEREFORE, Plaintiff prays for relief against Defendants as follows:

- 8 1. For damages according to proof at trial;
 - 9 2. For unpaid wages owed;
 - 10 3. For prejudgment interest on that amount at the legal rate;
 - 11 4. For one additional hour of pay for each workday that Defendants failed to provide a
12 meal period pursuant to Labor Code Sec. 226.7;
 - 13 5. For one additional hour of pay for each workday that Defendants failed to provide
14 rest periods pursuant to Labor Code Sec. 226.7;
 - 15 6. For waiting time penalties pursuant to Labor Code §203;
 - 16 7. For penalties pursuant to Labor Code §§226 and 1198.5;
 - 17 8. For reimbursement for work-related expenses incurred by Plaintiff pursuant to
18 Labor Code §2802;
 - 19 9. For injunctive relief enjoining Defendants from continuing to engage in the
20 unlawful conduct described herein;
 - 21 10. For costs of suit herein incurred, including attorneys' fees; and
 - 22 11. For such further relief as the court deems just.
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24 DATED: May 20, 2022

25 **AIMAN-SMITH & MARCY, P.C.**

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28 John A. Lofton, Esq.
Attorney for Plaintiff Casimiro Donato