

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
3/9/2023

Kern County Superior Court
By Vanessa Castro, Deputy

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

WINNCOMPANIES LLC, a Massachusetts Limited Liability Company,
and DOES 1 through 10, inclusive.

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

EMILIO RUBIO, on behalf of himself and all others similarly situated,
and on behalf of the general public,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Metropolitan Division

1215 Truxtun Ave
Bakersfield, CA 93301

CASE NUMBER:
(Número del Caso):

BCV-23-100671

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Roman Otkupman, Nidah Farishta: 5743 Corsa Ave., Suite 123, Westlake Village, CA 91362; (818)293-5623

DATE:
(Fecha) 3/9/2023

TAMARAH HARBER-PICKENS

Clerk, by
(Secretario)

Vanessa Castro

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- ☐ by personal delivery on (date):

Roman Otkupman, CSBN 249423

Roman@OLFLA.com

Nidah Farishta, CSBN 312360

Nidah@OLFLA.com

OTKUPMAN LAW FIRM, A LAW CORPORATION

5743 Corsa Ave., Suite 123

Westlake Village, CA 91362

Telephone: (818) 293-5623

Facsimile: (888) 850-1310

Attorney for Plaintiff,

Emilio Rubio, on behalf of himself and all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

EMILIO RUBIO, on behalf of himself and all others similarly situated, and on behalf of the general public,

Plaintiff,

vs.

WINNCOMPANIES LLC, a Massachusetts Limited Liability Company, and DOES 1 through 10, inclusive.

Defendants.

CASE NO. BCV-23-100671

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. PENALTIES PURSUANT TO
LABOR CODE SECTION 2699(f)
FOR VIOLATIONS OF LABOR
CODE §§ 226.7, 512, 558, 510, 1194,
1194.2, 226(a),(e) 1174(d), 201-203,
204(a)(b), 2802, 210, 218, 222, 6400,
6401, 6403, 6404, 6407, 8 CCR 3202,
17200**

DEMAND FOR JURY TRIAL

Plaintiff Emilio Rubio ("Plaintiff"), on behalf of himself and other "aggrieved employees" complains of Defendants as follows:

I. INTRODUCTION

1. This is a Representation Action, pursuant to Labor Code § 2698, 2699 et seq., on behalf of Plaintiff and certain individuals who are employed by, or were formerly employed by WINNCOMPANIES LLC and any subsidiaries or affiliated companies (hereinafter collectively referred to as "Defendants") within California.

2. For at least one (1) year prior to the filing of this action and continuing to the present (the "liability period"), Plaintiff and Defendant's California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California

1 employees were forced to continue working through their meal and rest breaks in order to assist
2 Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to
3 take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one
4 hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees
5 who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558,
and IWC Order No. 5-2001, Section 12.

6 3. Plaintiff and Defendants' California employees were required to work off the clock
7 for Defendant. Plaintiff and Defendant California employees were asked to perform tasks after they
8 had clocked out to finish their assignments such as unclogging sinks. It took Plaintiff on the average
9 of 15-30 minutes to complete these tasks. Defendants did not compensate Plaintiff and Defendants'
10 California employees if these tasks were completed outside of his regular work hours. These excess
11 hours were not recorded on our client's and Defendants' California employees wage statements.
12 Plaintiff and Defendant's California employees should have been compensated for that time, but he
13 was not in violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and
14 Defendant's California employees were not paid for all hours worked including all straight time
15 wages, and overtime wages. These failures to pay wages constitute violations of Labor Code § 510
and 1194.

16 4. Plaintiff, on behalf of himself and all other California employees of Defendant claims
17 that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays
18 their employees bonuses and commissions which are not included in the employees' regular rate of
19 pay for the purposes of computing the proper overtime rate. As a result, employees are not properly
20 compensated for work performed in excess of eight (8) hours in a workday and work performed in
21 excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular
rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510,
1194, and 1194.2.

22 5. Defendants have required Plaintiff and Defendant's California employees to work
23 hours in excess of eight hours in a day and forty in a week but had not paid these employees
24 overtime compensation as required by their collective bargaining agreement in violation of Labor
25 Code § 222.

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1 6. Defendants failed to issue Plaintiff and Defendant's California employees accurately
2 itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California
3 employees with all wages due, as detailed above, their wage statements failed to accurately state all
4 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
5 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable
6 hourly rates during the pay period and the corresponding number of hours worked, in violation of
7 Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due. These
8 violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendants'
9 California employees.

10 7. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's
11 California employees timely, accurate, itemized wage statements in accordance with Labor Code §
12 226 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
13 Defendant's California employees, and the records maintained by Defendants, have not accurately
14 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest
15 premiums, and total hour worked.

16 8. Our client further alleges that Defendants paid him and Defendant's California
17 employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they
18 were not paid all wages due and owing throughout the course of their employment as a result of
19 Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they
20 were not paid all final wages due and owing for the entirety of their employment. This violates
21 Labor Code §§ 201-203.

22 9. Defendant pays Plaintiff and it's California employees on a bi-weekly basis and has
23 failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis must
24 be paid no later than seven calendar days following the close of the payroll period. Due to the
25 violations described above, Plaintiff and Defendant's California employees did not receive all of
26 their wages earned in a timely manner as required by Labor Code § 204(a)(b).

27 10. Defendant failed to reimburse Plaintiff and Defendant's California employees for
28 the equipment they purchased to perform work for Defendant such as face masks. Defendant
further failed to reimburse its California employees for using their personal cell phones for the
benefit of Defendant. Labor Code section 2802 provides that "[a]n employer shall indemnify his
or her employee for all necessary expenditures or losses incurred by the employee in direct

1 consequence of the discharge of his or her duties.” As such, Plaintiff and Defendant’s California
2 employees have incurred reasonable and necessary expenses in the course of their job duties,
3 which were not reimbursed by Defendant, in violation of Labor Code § 2802.

4 11. Defendants failed to continue to take precautions to ensure employee safety after
5 the onset of COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory
6 syndrome coronavirus 2 (SARS-CoV-2). Plaintiff and Defendant’s California employees,
7 directly after the onset of COVID, were required to partake in mandatory temperature and health
8 checks, but these activities were not enforced or practiced quickly after the onset of COVID and
9 when COVID was still a health risk to the employees. Plaintiff and Defendant’s California
10 employees were also required to provide their own masks at the workplace. As a result of these
11 practices, Defendants have violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407
12 for failure to provide a safe and healthful environment for their Employees, as outlines above.
13 Defendants are liable for civil penalties pursuant to Cal. Labor Code § 2699 *et seq.*

14 12. Defendants failed to pay all wages earned to Plaintiff and Defendant’s California
15 employees as a result of the unlawful employment policies and practices herein. As a result of
16 these practices, Plaintiff and Defendant’s California employees were underpaid for hours
17 worked, including overtime and penalty wages, and this underpayment resulted in a failure to
18 pay all wages owed twice per month. Due to this failure, Defendants are liable under Labor Code
19 § 210 for failure to pay wages as required by law.

20 13. Plaintiff and all other aggrieved employees bring this claim pursuant to *Business*
21 & *Professions Code* § 17200, *et seq.* The conduct of all Defendants as alleged above has been
22 and continues to be unfair, unlawful, and harmful to Plaintiff and Defendant’s California
23 employees.

24 14. Plaintiff, on behalf of himself and all other aggrieved employees, brings this action
25 pursuant to Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a)(e), 1174(d), 201-203,
26 204(a)(b), 2802, 210, 218, 222, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202, and 17200.

27 15. Venue as to each Defendant is proper in this judicial district, pursuant to Code
28 of Civil Procedure § 395. Defendants operate within the State of California. The unlawful acts
alleged herein took place in Bakersfield, California.

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II. PARTIES

A. PLAINTIFF

16. Plaintiff Emilio Rubio is a resident of Bakersfield, California. At all times relevant herein, he was employed by Defendants in Kern County, California. Plaintiff was employed by Defendants as a non-exempt, hourly employee in California, including in and around the city of Bakersfield, County of Kern. During Plaintiff's employment:

- A. Plaintiff did not receive final wages at the time of his termination.
- B. Plaintiff was required to work without meal and rest periods, nor compensation in lieu thereof, as required by the Labor Code and relevant Wage Orders.
- C. Plaintiff was required to work either in excess of eight hours per workday or in excess of forty hours per workweek without receiving compensation at a rate of one and one half the regular rate of pay.
- D. Plaintiff was forced to receive inaccurately itemized and deficient wage statements, in violation of Labor Code § 226(a).
- E. Plaintiff did not receive his compensation in accordance with Labor Code § 204 in that Defendants failed to issues wages to its employees within seven (7) calendar days after the pay period ended.
- F. Plaintiff was not paid in a timely manner pertaining to the waiting time penalties in accordance with Labor Code §§ 201-203.
- G. Defendant also failed to reimburse Plaintiff and Defendant's California employees for reasonable and necessary expenses in the course of their job duties, in violation of Labor Code § 2802.

B. DEFENDANTS

17. Defendant WINNCOMPANIES LLC, is a Massachusetts Limited Liability Company doing business in Bakersfield, California. It operates within the State of California. Defendant employed Plaintiff and similarly situated employees within California. The violations alleged herein arose in Bakersfield, California.

18. As used herein, the term "AGGRIEVED EMPLOYEES," and "DEFENDANTS' CALIFORNIA EMPLOYEES," shall mean Defendant WINNCOMPANIES LLC's non-exempt employees.

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19. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

20. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and all other aggrieved employees.

FACTUAL ALLEGATIONS

21. Plaintiff and Defendant's California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California employees were forced to continue working through their meal and rest breaks in order to assist Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

22. Plaintiff and Defendants' California employees were required to work off the clock for Defendant. Plaintiff and Defendant California employees were asked to perform tasks after they had clocked out to finish their assignments such as unclogging sinks. It took Plaintiff on the average of 15-30 minutes to complete these tasks. Defendants did not compensate Plaintiff and Defendants' California employees if these tasks were completed outside of his regular work hours. These excess hours were not recorded on our client's and Defendants' California employees wage statements. Plaintiff and Defendant's California employees should have been compensated for that time, but he was not in violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendant's California employees were not paid for all hours worked including all straight time

1 wages, and overtime wages. These failures to pay wages constitute violations of Labor Code § 510
2 and 1194.

3 23. Plaintiff, on behalf of himself and all other California employees of Defendant claims
4 that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays
5 their employees bonuses and commissions which are not included in the employees' regular rate of
6 pay for the purposes of computing the proper overtime rate. As a result, employees are not properly
7 compensated for work performed in excess of eight (8) hours in a workday and work performed in
8 excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular
9 rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510,
10 1194, and 1194.2.

11 24. Defendants have required Plaintiff and Defendant's California employees to work
12 hours in excess of eight hours in a day and forty in a week but had not paid these employees
13 overtime compensation as required by their collective bargaining agreement in violation of Labor
14 Code § 222.

15 25. Defendants failed to issue Plaintiff and Defendant's California employees accurately
16 itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California
17 employees with all wages due, as detailed above, their wage statements failed to accurately state all
18 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
19 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable
20 hourly rates during the pay period and the corresponding number of hours worked, in violation of
21 Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due. These
22 violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendants'
23 California employees.

24 26. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's
25 California employees timely, accurate, itemized wage statements in accordance with Labor Code §
26 226 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
27 Defendant's California employees, and the records maintained by Defendants, have not accurately
28 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest
premiums, and total hour worked.

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1 27. Our client further alleges that Defendants paid him and Defendant's California
2 employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they
3 were not paid all wages due and owing throughout the course of their employment as a result of
4 Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they
5 were not paid all final wages due and owing for the entirety of their employment. This violates
6 Labor Code §§ 201-203.

7 28. Defendant pays Plaintiff and it's California employees on a bi-weekly basis and has
8 failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis must
9 be paid no later than seven calendar days following the close of the payroll period. Due to the
10 violations described above, Plaintiff and Defendant's California employees did not receive all of
11 their wages earned in a timely manner as required by Labor Code § 204(a)(b).

12 29. Defendant failed to reimburse Plaintiff and Defendant's California employees for
13 the equipment they purchased to perform work for Defendant such as face masks. Defendant
14 further failed to reimburse its California employees for using their personal cell phones for the
15 benefit of Defendant. Labor Code section 2802 provides that "[a]n employer shall indemnify his
16 or her employee for all necessary expenditures or losses incurred by the employee in direct
17 consequence of the discharge of his or her duties." As such, Plaintiff and Defendant's California
18 employees have incurred reasonable and necessary expenses in the course of their job duties,
19 which were not reimbursed by Defendant, in violation of Labor Code § 2802.

20 30. Defendants failed to continue to take precautions to ensure employee safety after
21 the onset of COVID. Under LC §6409.6(a)(1). "COVID-19" means severe acute respiratory
22 syndrome coronavirus 2 (SARS-CoV-2). Plaintiff and Defendant's California employees,
23 directly after the onset of COVID, were required to partake in mandatory temperature and health
24 checks, but these activities were not enforced or practiced quickly after the onset of COVID and
25 when COVID was still a health risk to the employees. Plaintiff and Defendant's California
26 employees were also required to provide their own masks at the workplace. As a result of these
27 practices, Defendants have violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407
28 for failure to provide a safe and healthful environment for their Employees, as outlines above.
Defendants are liable for civil penalties pursuant to Cal. Labor Code § 2699 *et seq.*

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1 31. Defendants failed to pay all wages earned to Plaintiff and Defendant's California
2 employees as a result of the unlawful employment policies and practices herein. As a result of
3 these practices, Plaintiff and Defendant's California employees were underpaid for hours
4 worked, including overtime and penalty wages, and this underpayment resulted in a failure to
5 pay all wages owed twice per month. Due to this failure, Defendants are liable under Labor Code
§ 210 for failure to pay wages as required by law.

6 32. Plaintiff and all other aggrieved employees bring this claim pursuant to *Business*
7 & *Professions Code* § 17200, et seq. The conduct of all Defendants as alleged above has been
8 and continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's California
9 employees.

10 CAUSES OF ACTION

11 FIRST CAUSE OF ACTION

12 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR** 13 **CODE §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 1174(d), 201-203, 204(a)(b), 2802, 210,** 14 **218, 222, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202, 17200**

15 33. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
16 forth herein.

17 34. As a result of the acts alleged herein, Plaintiff seeks penalties under Labor Code §
18 2698 *et seq.* because of Defendants' violations of Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2,
19 226(a), (e), 201-203, 204(a)(b), 1174(d), 2802, 210, 218, 222, 6400, 6401, 6403, 6404, 6407, 8 CCR
20 3202, 17200.

21 35. For each such violation, Plaintiff and all aggrieved employees are entitled to penalties
22 in an amount to be shown at the time of trial subject to the following formula:

- 23 a. With respect to the violation of Labor Code § 2699(f) for violations of
24 Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 1174(d),
25 201-203, 204(a)(b), 2802, 210, 218, 222, 6400, 6401, 6403, 6404, 6407,
26 8 CCR 3202, 17200 \$100 for the initial violation per employee per pay
27 period and \$200 for each subsequent violation per employee per pay
28 period.

36. These penalties will be allocated 75% to the Labor Workforce Development Agency,
and 25% to the affected employees.

1 37. On December 28, 2022, Plaintiff sent a letter, by certified mail, return receipt
2 requested, to the LWDA and Defendants setting forth the facts and theories of the violations alleged
3 against Defendants, as prescribed by Labor Code § 2698 *et seq.* (**Exhibit “A”**). Pursuant to Labor
4 Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)
5 calendar days of December 28, 2022. Plaintiff may therefore commence this action to seek penalties
6 pursuant to Labor Code § 2698 *et seq.*

7 38. Wherefore, Plaintiff and the aggrieved employees he seeks to represent request relief
8 as described herein.

9 **ALLEGATIONS AS TO FAILURE TO PROVIDE MEAL AND REST PERIODS OR**
10 **COMPENSATION IN LIEU THEREOF (LABOR CODE §§ 226.7, 512, 558)**

11 39. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
12 forth herein.

13 40. Plaintiff and all other aggrieved employees are entitled to one hour of pay for each
14 day that Defendants failed to properly provide one or more meal or rest periods as set forth in the
15 IWC Wage Orders and Labor Code §§ 226.7, 512, and 558.

16 41. Defendants have failed to provide Plaintiff and all other aggrieved employees one or
17 more meal or rest periods during their employment. Defendants have failed to compensate Plaintiff
18 and all other aggrieved employees at the rate of one hour or pay at his or her regular rate of pay for
19 each day on which one or more meal or rest periods were not provided.

20 42. Plaintiff and Defendant’s California employees were routinely unable, and not
21 authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-
22 minute meal break for every shift they worked. Specifically, Plaintiff and Defendant’s California
23 employees were forced to continue working through their meal and rest breaks in order to assist
24 Defendant’s needs. Because of this, Plaintiff and Defendant’s California employees were unable to
25 take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one
26 hour’s pay for each missed meal and rest break to Plaintiff and Defendant’s California employees
27 who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558,
28 and IWC Order No. 5-2001, Section 12.

43. Additionally, Plaintiff is entitled to, and seeks, attorney’s fees and costs, and
prejudgment interest.

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**ALLEGATIONS AS TO FAILURE TO PAY ALL WAGES
IN VIOLATION OF (LABOR CODE §§ 510, 1194, 1194.2)**

44. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

45. Plaintiff and Defendants' California employees were required to work off the clock for Defendant. Plaintiff and Defendant California employees were asked to perform tasks after they had clocked out to finish their assignments such as unclogging sinks. It took Plaintiff on the average of 15-30 minutes to complete these tasks. Defendants did not compensate Plaintiff and Defendants' California employees if these tasks were completed outside of his regular work hours. These excess hours were not recorded on our client's and Defendants' California employees wage statements. Plaintiff and Defendant's California employees should have been compensated for that time, but he was not in violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendant's California employees were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194.

46. Plaintiff, on behalf of himself and all other California employees of Defendant claims that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays their employees bonuses and commissions which are not included in the employees' regular rate of pay for the purposes of computing the proper overtime rate. As a result, employees are not properly compensated for work performed in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510, 1194, and 1194.2.

47. As a result of the unlawful acts of Defendants in willfully failing to pay all alleges, Plaintiff and Defendant's California employees have been deprived of wages in amounts to be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and costs pursuant to Labor Code § 1194 and liquidated damages pursuant to Labor Code § 1194.2.

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**ALLEGATIONS AS TO KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS
(LABOR CODE § 226(a), (e)), 1174(d))**

48. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

49. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must accurately set forth, among other things, the total gross and net wages earned, the total hours worked, and the hourly rates in effect, for its employees. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

50. Defendants failed to issue Plaintiff and Defendant's California employees accurately itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California employees with all wages due, as detailed above, their wage statements failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due. These violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendants' California employees.

51. Defendants knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff and Defendant's California employees in accordance with Labor Code § 226 and keep accurate records as required by § 1174(d). The statements provided to Plaintiff and Defendant's California employees and the records maintained by Defendants, have not accurately reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest premiums, and total hour worked.

52. The wage statements provided to Plaintiff and all other aggrieved employees fail to accurately itemize in wage statements total gross and net wages earned, and the total hours worked, and all hourly rates in effect, for its employees. Defendants' violations of Labor Code § 226(a) are knowing and intentional, and Plaintiff has suffered injury as a result of the receipt of defective wage statements, thereby entitling him to penalties pursuant to Labor Code § 226(e).

**ALLEGATIONS AS TO FAILURE TO PAY WAGES DUE AT THE TIME OF
DISCHARGE IN VIOLATION OF LABOR CODE §§ 201-202, RESULTING IN
SECTION 203 WAGES AND PENALTIES (WAITING TIME PENALTIES)**

53. Plaintiff hereby incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

54. At all times material herein, the California Labor Code Sections 201, 202, and 203 were in effect and binding on Defendants.

55. California Labor Code § 202 requires employers to pay employees all wages due within seventy-two (72) hours of resignation. California Labor Code § 201 states in pertinent part that “if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” California Labor Code § 203 provides that if an employer willfully fails to timely pay such wages the employer must, as penalty, continue to pay the subject employee’s wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

56. Plaintiff was entitled to compensation for unpaid wages, but to date has not received such compensation. Specifically, Defendants failed to pay Plaintiff all wages due to Plaintiff at the time of his termination. Thus, since Defendants failed to promptly pay Plaintiff all wages due to Plaintiff at the time of his termination, Defendants violated Section 201 of the Labor Code and Plaintiff is therefore entitled to wages and penalties pursuant to Labor Code Section 203.

57. More than 30 days have passed since Plaintiff’s employment ended with Defendants.

58. As a consequence of Defendants’ willful conduct in not paying wages owed to Plaintiff, Plaintiff is entitled to 30 days of wages as a penalty pursuant to Labor Code § 203 for Defendants’ failure to timely pay legal wages.

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**ALLEGATIONS AS TO FAILURE TO TIMELY PAY EMPLOYEES
IN VIOLATION OF LABOR CODE § 204(a)(b)**

59. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

60. At all times relevant herein, Labor Code § 204 was in full force and effect and binding on Defendants.

61. Wages must be paid according to a regularly set schedule. (Labor Code § 204). All earned wages must be paid at least twice a month, on days designated in advance by the employer. Work performed between the 1st and the 15th days, inclusive, of any calendar month must be paid between the 16th and 26th day of the same month. Work performed between the 16th and the last day of the month must be paid between the 1st and 10th day of the following month. (Labor Code § 204). Weekly or bi-weekly (every two weeks) payroll must be paid within seven (7) days of the end of the pay period in which the wages were earned (Labor Code §§ 204(a), 204(b)).

62. Defendants pay Plaintiff and its California employees on a bi-weekly basis and have failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis must be paid no later than seven calendar days following the close of the payroll period. Due to the violations described above, Plaintiff and Defendants' California employees did not receive all of their wages earned in a timely manner as required by Labor Code § 204(a)(b).

63. Additionally, Defendant failed to pay Plaintiff and Defendant's California Employees earned wages when they became due, failed to pay wages on a bi-weekly basis, and have failed to comply with Labor Code § 204(a) which provides that wages earned on a bi-weekly basis must be paid no later than seven calendar days following the close of the payroll period. Due to the violations described above, Plaintiff and Defendant's California Employees did not receive all of their wages earned when due and in a timely manner as required by Labor Code § 204.

64. Defendants have failed to comply with the above-section because they waited longer than seven days from the close of the pay period to pay its bi-weekly paid employees.

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**ALLEGATIONS AS TO FAILURE TO REIMBURSE FOR BUSINESS EXPENSES IN
VIOLATION OF CALIFORNIA LABOR CODE § 2802**

65. Plaintiff hereby incorporates preceding paragraphs of this Complaint as though fully set forth herein.

66. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

67. Defendant failed to reimburse Plaintiff and Defendant’s California employees for the equipment they purchased to perform work for Defendant such as face masks. Defendant further failed to reimburse its California employees for using their personal cell phones for the benefit of Defendant. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” As such, Plaintiff and Defendant’s California employees have incurred reasonable and necessary expenses in the course of their job duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

68. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest and attorneys’ fees and cost, under Labor Code § 2802.

69. Plaintiff also requests relief as described below.

**ALLEGATIONS AS TO FAILURE TO PAY FOR ALL HOURS WORKED,
INCLUDING OVERTIME HOURS WORKED IN VIOLATION OF
(LABOR CODES §§ 210, 218, 222)**

70. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

71. Section 2(K) or Wage Order 5 defines “hours worked” as “the rime during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” Labor Code §§ 1194 and 1197 required employers to compensate Plaintiff for all hours worked at least at a minimum wage ad established by the Wage Order. Defendants did not pay for all hours worked and frequently required Plaintiff to work off the clock. Defendants have been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period as more set forth below:

1 72. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to pay
2 Plaintiff all wages earned twice during each calendar month pursuant to Labor Code § 204(a).
3 Defendants failed to pay all wages earned to Plaintiff as a result of the unlawful employment policies
4 and practices herein. As a result of these practices, Plaintiff was underpaid for hours worked,
5 including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages
6 owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure
to pay wages as required by law.

7 73. Failure to Pay Overtime Wages. Defendants have required to work hours in excess of
8 eight hours in a day and forty in a week but had not paid Plaintiff overtime compensation as required
9 by their collective bargaining agreement in violation of Labor Code § 222. As a result, Plaintiff has
10 been denied payment for all hours worked as required by Cal. Labor Code § 222, § 1194, § 1198.
Defendants are liable for civil penalties pursuant to Labor Code §§ 558.

11 **ALLEGATIONS AS TO FAILURE TO PROVIDE PLACE OF EMPLOYMENT**
12 **THAT IS SAFE AND HEALTHFUL IN VIOLATION OF**
13 **(LABOR CODE §§ 6400, 6401, 6402, 6403, 6404, 6407, 8 CCR 3202)**

14 74. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
15 forth herein.

16 75. Cal. Labor Code § 6400(a) provides that every employer shall furnish employment
17 and a place of employment that is safe and healthful for Plaintiff therein. Cal. Labor Code § 6401
18 provides that “every employer shall furnish and use safety devices and safeguard, and shall adopt
19 and use practices, means, methods, operations, and processes which are reasonably adequate to
render such employment and place of employment safe and healthful. Every employer.

20 76. Pursuant to Cal. Labor Code § 6402, no employer shall require, or permit any
21 employee to go or be in any employment or place of employment which is not safe and healthful.
22 Cal. Labor Code § 6403 states that no employer shall fail or neglect to provide and use safety
23 devices and safeguard reasonably adequate to render the employment and place of employment safe,
24 or adopt and use methods and processes reasonably necessary to protect the life, safety, and health of
Plaintiff and Defendant’s California employees.

25 77. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any
26 place pf employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every
27 employer and every employee shall comply with occupational safety and health standards, with

1 Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to
2 this division which are applicable to his own actions and conduct. Defendants failed to continue to
3 take precautions to ensure employee safety after the onset of COVID. Under LC §6409.6(a)(1).
4 “COVID-19” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Plaintiff,
5 directly after the onset of COVID, were required to partake in mandatory temperature and health
6 checks, but these activities were not enforced or practiced quickly after the onset of COVID and
7 when COVID was still a health risk to Plaintiff and Defendant’s California employees. Plaintiff and
8 Defendant’s California employees was also required to provide their own masks at the workplace.

9 78. As a result of these practices, Defendants have violated Cal. Labor Code §§ 6400,
10 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for
11 Plaintiff, as outlines above.

12 **ALLEGATIONS AS TO UNFAIR COMPETITION PURSUANT TO**
13 **BUSINESS & PROFESSIONS CODE § 17200**

14 79. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
15 forth herein.

16 80. This is an Action for Unfair Business Practices. Plaintiff Emilio Rubio brings this
17 claim pursuant to *Business & Professions Code* § 17200, et seq. The conduct of all Defendants as
18 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff and
19 Defendant’s California employees as a result of Defendant’s failure to comply with the labor code
20 sections as set out above including but not limited to Labor Code Sections 6400, 6401, 6402, 6403,
21 6404, 6407. Plaintiff and Defendant’s California employees seek to enforce important rights
22 affecting the public interest within the meaning of *Code of Civil Procedure* § 1021.5.

23 81. Plaintiff is a “person” within the meaning of *Business & Professions Code* § 17204,
24 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
25 appropriate equitable relief.

26 82. *Business & Profession Code* § 17200 et. seq. prohibits unlawful and unfair business
27 practices.

28 83. Defendants have violated statutes and public policies. Through the conduct alleged in
this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
violated specific provisions of the *Labor Code*, and have engaged in other unlawful and unfair
business practices in violation of *Business & Professions Code* § 17200, et seq., depriving Plaintiff,

1 of rights, benefits, and privileges guaranteed to Plaintiff under law.

2 84. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
3 § 17200 *et. seq.* of the *Business & Professions Code*.

4 85. As a proximate result of the above mentioned acts of Defendants, Plaintiff has been
5 damaged in a sum as may be proven.

6 86. Unless restrained by this Court, Defendants will continue to engage in the unlawful
7 conduct as alleged above. Pursuant to *Business & Professions Code*, this Court should make such
8 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use
9 or employment, by Defendants, their agents, or Plaintiff, of any unlawful or deceptive practice
10 prohibited by the *Business & Professions Code*, and/or, including but not limited to, disgorgement of
11 profits which may be necessary to restore Plaintiff to the money Defendants have unlawfully failed
12 to pay.

13 **RELIEF REQUESTED**

14 WHEREFORE, Plaintiff prays for the following relief:

15 1. For penalties pursuant to Labor Code § 203 for Plaintiff and all other aggrieved
16 employees who are no longer employed by Defendants, equal to their daily wage multiplied by thirty
17 (30) days;

18 2. For penalties pursuant to Labor Code § 226(e) for Plaintiff and all other aggrieved
19 employees;

20 3. For penalties pursuant to Labor Code § 226.7 for Plaintiff and all other aggrieved
21 employees;

22 4. For penalties pursuant to Labor Code § 1194.2 for Plaintiff and all other aggrieved
23 employees;

24 5. For penalties pursuant to Labor Code § 204(b) for Plaintiff and all other aggrieved
25 employees;

26 6. For penalties pursuant to Labor Code § 2802 for Plaintiff and all other aggrieved
27 employees;

28 7. For penalties pursuant to Labor Code § 1174(d) for Plaintiff and all other aggrieved
employees;

8. For penalties pursuant to Labor Code § 210 for Plaintiff and all other aggrieved
employees;

- 1 9. For penalties pursuant to Labor Code § 222 for Plaintiff and all other aggrieved
2 employees;
3 10. For penalties pursuant to Labor Code § 6400 for Plaintiff and all other aggrieved
4 employees;
5 11. For restitution for unfair competition pursuant to Business and Professions Code §
6 17200 et seq., including disgorgement of profits, in an amount as may be proven;
7 12. For penalties and other relief pursuant to Labor Code § 2698 et seq. for Plaintiff and
8 all other aggrieved employees;
9 13. An award providing for payment of costs of suit pursuant to Labor Code §
10 2699(g)(1);
11 14. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1);
12 15. An award of prejudgment and post-judgment interest;
13 16. An award providing for payment of costs of suit; and
14 17. Such other and further relief as this Court may deem just and proper.

15 Dated: March 6, 2023

OTKUPMAN LAW FIRM,
A Law Corporation

16
17 By: 

18 ROMAN OTKUPMAN
19 Attorneys for Plaintiff

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

22 Dated: March 6, 2023

OTKUPMAN LAW FIRM,
A Law Corporation

23
24
25 By: 

26 ROMAN OTKUPMAN
27 Attorneys for Plaintiff

EXHIBIT A

OTKUPMAN LAW FIRM, A LAW CORPORATION

5743 Corsa Ave, Suite 123
Westlake Village, CA 91362
Tel.: 818-293-5623
Fax: 888-850-1310

December 28, 2022

VIA ELECTRONIC FILING

Labor & Workforce Development Agency

VIA CERTIFIED MAIL

WinnCompanies LLC
6 Faneuil Hall
Marketplace
Boston, MA 02109
Defendant certified mail # 7022 0410 0002 4061 2685

VIA CERTIFIED MAIL

Agent for Service of Process
C T Corporation System
28 Liberty Street
New York, CA 10005
Agent certified mail # 7022 0410 0002 4061 2678

VIA CERTIFIED MAIL

Winn Residential
5948 Victor Street
Bakersfield, CA 93308
Defendant certified mail # 7022 0410 0002 4061 2661

VIA CERTIFIED MAIL

WinnCompanies
One Washington Mall, Suite 500
Boston, MA 02108
Defendant certified mail # 7022 0410 0002 4061 2654

Re: ***Emilio Rubio v. WinnCompanies LLC, Winn Residential, Winn Companies – Labor Code Violations of WinnCompanies LLC, Winn Residential, Winn Companies – Compliance Letter of California Labor Code § 2698 – Private Attorneys General Act***

Dear Sir or Madam:

This office represents Emilio Rubio (“Plaintiff”), a former California employee of WinnCompanies LLC, Winn Residential, WinnCompanies (“Defendants”). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client works for Defendant in Southern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its California non-exempt employees.

Plaintiff began working for Defendants on or about March 26, 2018. While working for Defendant as a OPS Maintenance Technician II, Plaintiff was earning (\$15.90) dollars per hour.

Plaintiff and Defendant’s California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant’s California employees were forced to continue working through their meal and rest breaks in order to assist Defendant’s needs. Because of this, Plaintiff and Defendant’s California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one hour’s pay for each missed meal and rest break to Plaintiff and Defendant’s California employees who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

Plaintiff and Defendants’ California employees were required to work off the clock for Defendant. Plaintiff and Defendant California employees were asked to perform tasks after they had clocked out to finish their assignments such as unclogging sinks. It took Plaintiff on the average of 15-30 minutes to complete these tasks. Defendants did not compensate Plaintiff and Defendants’ California employees if these tasks were completed outside of his regular work hours. These excess hours were not recorded on our client’s and Defendants’ California employees wage statements. Plaintiff and Defendant’s California employees should have been compensated for that time, but he was not in violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendant’s California employees were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194.

Plaintiff, on behalf of himself and all other California employees of Defendant claims that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays their employees bonuses and commissions which are not included in the employees regular rate of pay for the purposes of computing the proper overtime rate. As a result, employees are not properly compensated for work performed in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half

times the regular rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510, 1194, and 1194.2.

Defendants have required Plaintiff and Defendant's California employees to work hours in excess of eight hours in a day and forty in a week but had not paid these employees overtime compensation as required by their collective bargaining agreement in violation of Labor Code § 222.

Defendants failed to issue Plaintiff and Defendant's California employees accurately itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California employees with all wages due, as detailed above, their wage statements failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due. These violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendants' California employees.

Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's California employees timely, accurate, itemized wage statements in accordance with Labor Code § 226 and keep accurate records as required by § 1174(d). The statements provided to Plaintiff and Defendant's California employees, and the records maintained by Defendants, have not accurately reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest premiums, and total hours worked.

Our client further alleges that Defendants paid him and Defendant's California employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they were not paid all wages due and owing throughout the course of their employment as a result of Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they were not paid all final wages due and owing for the entirety of their employment. This violates Labor Code §§ 201-203.

Defendant pays Plaintiff and its California employees on a bi-weekly basis and has failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis must be paid no later than seven calendar days following the close of the payroll period. Due to the violations described above, Plaintiff and Defendant's California employees did not receive all of their wages earned in a timely manner as required by Labor Code § 204(a)(b).

Defendant failed to reimburse Plaintiff and Defendant's California employees for the equipment they purchased to perform work for Defendant such as face masks. Defendant further failed to reimburse its California employees for using their personal cell phones for the benefit of Defendant. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her

employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” As such, Plaintiff and Defendant’s California employees have incurred reasonable and necessary expenses in the course of their job duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

Defendants failed to continue to take precautions to ensure employee safety after the onset of COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Plaintiff and Defendant’s California employees, directly after the onset of COVID, were required to partake in mandatory temperature and health checks, but these activities were not enforced or practiced quickly after the onset of COVID and when COVID was still a health risk to the employees. Plaintiff and Defendant’s California employees were also required to provide their own masks at the workplace. As a result of these practices, Defendants have violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their Employees, as outlines above. Defendants are liable for civil penalties pursuant to Cal. Labor Code § 2699 *et seq.*

Defendants failed to pay all wages earned to Plaintiff and Defendant’s California employees as a result of the unlawful employment policies and practices herein. As a result of these practices, Plaintiff and Defendant’s California employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure to pay wages as required by law.

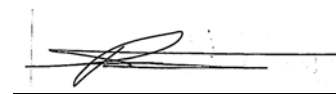
Plaintiff and all other aggrieved employees bring this claim pursuant to *Business & Professions Code* § 17200, *et seq.* The conduct of all Defendants as alleged above has been and continues to be unfair, unlawful, and harmful to Plaintiff and Defendant’s California employees.

We invite Defendants or its attorney(s) to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Our office awaits your response.

Very truly yours,

OTKUPMAN LAW FIRM



ROMAN OTKUPMAN

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Roman Otkupman, Esq., Bar No. 249423; Nidah Farishta, Esq., Bar No. 312360 Otkupman Law Firm, ALC 5743 Corsa Ave., Suite 123 Westlake Village, CA 91362 TELEPHONE NO.: (818) 293-5623 FAX NO.: (888) 850-1310 ATTORNEY FOR (Name): Plaintiff Emilio Rubio		FOR COURT USE ONLY ELECTRONICALLY FILED 3/6/2023 12:55 PM Kern County Superior Court By Vanessa Castro, Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Kern STREET ADDRESS: 1215 Truxtun Ave MAILING ADDRESS: CITY AND ZIP CODE: Bakersfield, CA 93301 BRANCH NAME: Metropolitan Division			
CASE NAME: Emilio Rubio v. WinnCompanies LLC			
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)		Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: BCV-23-100671	
		JUDGE: DEPT:	

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (<i>not specified above</i>) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (<i>not specified above</i>) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. ☐ Large number of separately represented parties | d. ☐ Large number of witnesses |
| b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☐ Substantial amount of documentary evidence | f. ☐ Substantial postjudgment judicial supervision |
3. Remedies sought (*check all that apply*): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (*specify*): One (1)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (*You may use form CM-015.*)

Date: March 6, 2023
 Roman Otkupman

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition



SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN
BAKERSFIELD COURT
1215 TRUXTUN AVENUE
BAKERSFIELD CA 93301

FOR COURT USE ONLY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN

MARCH 09, 2023
By Vanessa Castro DEPUTY

PLAINTIFF/PETITIONER:

EMILIO RUBIO, ON BEHALF OF HIMSELF AND ALL OTHERS
SIMILARLY SITUATED, AND ON BEHALF OF THE GENERAL
PUBLIC

DEFENDANT/RESPONDENT:

WINNCOMPANIES LLC, A MASSACHUSETTS LIMITED
LIABILITY COMPANY

**NOTICE OF ASSIGNMENT TO JUDGE FOR ALL PURPOSES AND
NOTICE OF ORDER TO SHOW CAUSE RE CRC RULE 3.110 AND
NOTICE OF CASE MANAGEMENT CONFERENCE**

CASE NUMBER:

BCV-23-100671

By order of the presiding judge, the above entitled case is assigned to the Honorable David Zulfa for all purposes. It will be managed on the direct calendar program in Bakersfield Division J until its conclusion. Peremptory challenges, if any, must be made within the times set out in CCP §170.6. Please include the initials **DRZ** after the case number on all future pleadings filed in this case.

TO PLAINTIFF AND PLAINTIFF'S COUNSEL:

You are ordered to appear on **June 22, 2023** in **Bakersfield Division J** at **8:30 AM** to give any legal reason why sanctions shall not be imposed for failure to serve the complaint on all named defendants and file proof(s) of service with the court within sixty (60) days after the filing of the complaint pursuant to California Rules of Court, Rule 3.110. All appearances are mandatory, unless the court receives the required proof(s) of service five (5) court days prior to the hearing date, and then no appearance is necessary.

TO EACH PARTY AND THEIR RESPECTIVE ATTORNEY(S) OF RECORD:

This case is set for Case Management Conference, by the Honorable David Zulfa on **September 05, 2023** at **8:30 AM** in **Bakersfield Division J**. Case management statements are to be filed at least fifteen (15) days prior to the conference in accordance with California Rules of Court, Rules 3.720 – 3.730. All parties shall comply with California Rules of Court, Rules 3.720 – 3.730.

NOTICE TO PLAINTIFF'S COUNSEL

IMPORTANT: You are required to serve this Notice of Assignment and Notice of Order to Show Cause Date and Notice of Case Management Conference Date with the Summons, Complaint [Local Rule 3.7(a)], Alternative Dispute Resolution (ADR) Information Packet, and ADR Stipulation and Order Form (California Rules of Court, Rule 3.221).

NOTICE TO CROSS COMPLAINANT'S COUNSEL

IMPORTANT: If you are bringing a cross complaint against new parties, you are, likewise, required to serve this Notice of Assignment pursuant to California Rules of Court, Rule 3.110 and Notice of Order to Show Cause date and Notice of Case Management Conference date on the new cross defendants.

TAMARAH HARBER-PICKENS
CLERK OF THE SUPERIOR COURT

Date: March 09, 2023

Signed: 3/9/2023 12:14:44 PM
By: Vanessa Castro
Vanessa Castro, Deputy Clerk

EMILIO RUBIO, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED, AND ON BEHALF OF
THE GENERAL PUBLIC VS WINNCOMPANIES LLC, A MASSACHUSETTS LIMITED LIABILITY COMPANY

BCV-23-100671

The Clerk of the Superior Court's office has received a civil complaint from you for filing. Pursuant to the Trial Court Delay Reduction Act, your case has been assigned to the Honorable David Zulfa as monitoring judge.

Judge David Zulfa has instituted a direct calendaring system for all cases assigned to him/her as the monitoring judge.

All law and motion, case management and trial setting conferences, ex parte matters and trials will be scheduled before him/her in Bakersfield Division J. This will involve all cases in which the clerk has assigned the initials DRZ to the complaint at the time of filing. Counsel is expected to make the initials of the monitoring judge a part of the case number on all pleadings and papers.

Law & Motion and Ex-Parte hearing dates must be pre-cleared by contacting the Direct Calendaring Clerk at 661-610-6460. Tentative rulings can be located by visiting "<http://www.kern.courts.ca.gov/>", after 4:00 pm. Click on the Non-Criminal Case Information link to enter the case number. Please note, not all departments provide tentative rulings.

At the time of filing the complaint, plaintiff's counsel will be given a Notice of Case Management Conference which sets a conference approximately one hundred eighty (180) days after filing of the complaint. This notice must be served with the summons and complaint on all defendants. Defendants must serve the notice on all cross-defendants named. The notice must also be served on interveners and lien claimants.

Telephonic appearances for case management conferences and law and motion hearings are available through Court Call. The toll free telephone number for Court Call is (888) 88-COURT. Proper procedures must be complied with under California Rules of Court, Rule 3.670. Arrangements to make appearances through Court Call must be made at least five (5) court days prior to the hearing date.

Another judge will hear settlement conferences in cases assigned to Judge David Zulfa. However, those cases that do not settle will be set for trial before him/her.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN
SPECIAL RULES RELATING TO CASE MANAGEMENT CONFERENCES**

At least fifteen (15) days prior to the case management conference, each party shall prepare, file and serve on each other party a case management conference statement providing the Court with the following information:

1. The “at-issue” status of the case including any new parties that may be contemplated;
2. A brief statement of the type of case and the general facts or contentions;
3. A description of the discovery done to date and that contemplated to be done;
4. Estimated time for trial and whether a jury is demanded;
5. Whether or not the case is entitled to priority in trial setting and if so, the legal authority thereof;
6. An evaluation of the case for alternative dispute resolution, including arbitration (judicial or binding), mediation or private judge handling;
7. If a person injury action, a description of the injuries sustained by each plaintiff and the elements of claimed damage;
8. A statement of any settlement negotiations undertaken thus far;
9. The name of the attorney primary responsible for the case on behalf of the party filing the statement.

More than one party may join in the filing of a single statement.

The case management conference shall be attended by the attorney primarily responsible for the case on behalf of each party or a member of his or her firm or counsel formally associated in the case. The attorney attending shall be thoroughly familiar with the case, and be able to engage in meaningful discussions with court and counsel, and to enter into agreements on behalf of his or her client on the following subjects:

1. The “at-issue” status of the case including the dismissal of the unnamed doe defendants or cross-defendants by agreement of all parties;
2. Discovery conducted and remaining to be done;
3. Amenability of the case to alternative dispute resolution including, but no limited to, arbitration (judicial or binding), mediation, and private judge handling.
4. Delineation of issues including stipulation of facts not in substantial controversy;
5. Settlement prospects;
6. Setting the matter for trial, pre-trial conferences, settlement conference or further case management conference;
7. Any other matters relevant to the processing of the case to a final resolution.

Any violation of these rules shall result in the imposition of substantial sanctions which may include monetary, issue, termination, or other appropriate sanctions.

CERTIFICATE OF POSTING

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, and not a party to the within action, that I served the ***Notice of Assignment/Notice of Order to Show Cause Re CRC 3.110/Notice of Case Management Conference*** attached hereto on all interested parties and any respective counsel of record in the within action by posting true copies thereof, to the Superior Court of California, County of Kern, Non-Criminal Case Information Portal (<https://www.kern.courts.ca.gov>).

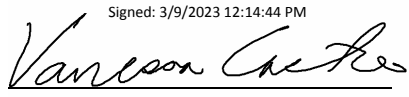
Date of Posting: March 09, 2023

Place of Posting: Bakersfield, CA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

TAMARAH HARBER-PICKENS
CLERK OF THE SUPERIOR COURT

Date: March 09, 2023

By:  Signed: 3/9/2023 12:14:44 PM
Vanessa Castro, Deputy Clerk