

SUMMONS

(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

AIR CULINAIRE WORLDWIDE, LLC; and DOES 1 to 25, inclusive,

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

E-FILED
5/4/2023 6:08 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
23CV415879
Reviewed By: Y. Chavez
Envelope: 11892745

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): County of Santa Clara

Downtown Superior Court, 191 N. First Street, San Jose, CA 95113

CASE NUMBER:
(Número del Caso): 23CV415879

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):
Harout Messrelian, Maralle Messrelian; Messrelian Law Inc., 500 N. Central Ave., Suite 840, Glendale, CA 91203; 818-484-6531

DATE: 5/4/2023 6:08 PM Clerk of Court Clerk, by Y. Chavez, Deputy
(Fecha) (Secretario) (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):

MESSRELIAN LAW INC.

Harout Messrelian (SB# 272020)
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Attorneys for Plaintiff Eduardo Martinez Guizar

E-FILED
5/4/2023 6:08 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
23CV415879
Reviewed By: Y. Chavez

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

EDUARDO MARTINEZ GUIZAR,	)	CASE NO.: 23CV415879
	)	
Plaintiff,	)	COMPLAINT FOR DAMAGES FOR:
	)	
vs.	)	1) FAILURE TO COMPENSATE FOR
	)	ALL HOURS WORKED;
AIR CULINAIRE WORLDWIDE, LLC;	)	2) FAILURE TO PAY MINIMUM
and DOES 1 to 25, inclusive,	)	WAGES;
	)	3) FAILURE TO PAY OVERTIME;
	)	4) FAILURE TO PROVIDE
	)	ACCURATE ITEMIZED WAGE
	)	STATEMENTS;
Defendants.	)	5) FAILURE TO PAY WAGES WHEN
	)	EMPLOYMENT ENDS;
	)	6) FAILURE TO PAY WAGES OWED
	)	EVERY PAY PERIOD;
	)	7) FAILURE TO GIVE REST BREAKS;
	)	8) FAILURE TO GIVE MEAL
	)	BREAKS;
	)	9) FAILURE TO REIMBURSE FOR
	)	BUSINESS EXPENSES;
	)	10) PRIVATE ATTORNEYS GENERAL
	)	ACT ("PAGA");
	)	11) FAILURE TO PROVIDE
	)	PERSONNEL RECORDS;
	)	12) FAILURE TO PROVIDE PAY
	)	RECORDS;
	)	13) DISCRIMINATION ON THE BASIS
	)	OF PHYSICAL DISABILITY IN
	)	VIOLATION OF FEHA;
	)	14) FAILURE TO ACCOMMODATE

1) PHYSICAL DISABILITY IN
2) VIOLATION OF FEHA;
3) 15) FAILURE TO ENGAGE IN
4) INTERACTIVE PROCESS TO
5) DETERMINE REASONABLE
6) ACCOMMODATION IN
7) VIOLATION OF FEHA;
8) 16) RETALIATION IN VIOLATION OF
9) FEHA;
10) 17) FAILURE TO PREVENT
11) DISCRIMINATION AND
12) RETALIATION IN VIOLATION OF
13) FEHA;
14) 18) WRONGFUL TERMINATION IN
15) VIOLATION OF PUBLIC POLICY;
16) 19) VIOLATION OF CALIFORNIA
17) BUSINESS AND PROFESSIONS
18) CODE SECTION 17200.

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COMES NOW Plaintiff, EDUARDO MARTINEZ GUIZAR (hereinafter "Plaintiff"),
and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Santa Clara in this judicial district because Defendants AIR CULINAIRE WORLDWIDE, LLC, and DOES 1 to 25, inclusive, do business in the County of Santa Clara and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Santa Clara is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of Santa Clara, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant AIR CULINAIRE WORLDWIDE, LLC is and was a Delaware limited liability company, doing business in Santa Clara County, California, and which employed Plaintiff. Defendants AIR CULINAIRE WORLDWIDE, LLC, and DOES 1 to 25, inclusive, are hereinafter referred to as "AIR CULINAIRE" or "Defendants."

4. The "aggrieved employees" are all current and former hourly non-exempt or hourly paid

1 employees who worked for AIR CULINAIRE at any and all of their California locations during
2 the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code
3 Private Attorneys General Act of 2004 (“PAGA”).

4 5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
5 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
6 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
7 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
8 for the conduct alleged herein. Upon discovering the true names and capacities of these
9 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
10 capacities of these fictitiously named defendants.

11 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
12 that information and belief, alleges that at all times herein mentioned, each of the remaining
13 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
14 under the authority of their agency, employment, or representative capacity, with the consent of
15 his/her codefendants.

16 **GENERAL ALLEGATIONS**

17 7. Plaintiff started working for AIR CULINAIRE at its location in San Jose (1250
18 Aviation Ave., San Jose, California) in or around early 2022 as a cook. During his tenure,
19 Plaintiff was classified as an hourly, non-exempt employee and his latest rate of pay was
20 \$24.61/hour. Plaintiff’s employment ended on or around October 31, 2022 wherein he
21 was wrongfully terminated. Note that in addition to being a cook, Plaintiff was also given
22 other job duties including dishwashing, cleaning the oven, taking out the trash, and janitorial
23 duties, which were not part of his job description as a cook and dish preparer.

24 8. AIR CULINAIRE violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it
25 failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked,
26 including the statutory minimum wage for all hours worked and for “off the clock” work. This
27 is so because AIR CULINAIRE had a company policy wherein they would disproportionately
28 round down the number of hours worked by Plaintiff and other aggrieved employees, resulting
in “time shaving” and further resulting in aggrieved employees not being paid for all hours

1 worked. Furthermore, and to the extent that Plaintiff and others worked through their meal
2 periods while “off the clock”, they were not compensated for all hours worked, which would be
3 akin to a minimum wage violation. Moreover, Plaintiff and others would perform work tasks
4 either before clocking in or after clocking out, including clean up, and were not compensated for
5 these work hours in violation of California law.

6 9. Due to the above “off the clock” violations and due to company policy, AIR
7 CULINAIRE also violated Labor Code §510 because it failed to pay Plaintiff and other
8 aggrieved employees overtime compensation, even though they worked more than 8 hours per
9 day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff’s and
10 other aggrieved employees’ actual work hours entitled them to overtime compensation, however,
11 AIR CULINAIRE did not compensate its hourly, non-exempt employees with the correct
12 amount of overtime due to the “off the clock” work and time shaving as described above.
13 Furthermore, AIR CULINAIRE failed to include bonuses/incentive payments in calculating
14 Plaintiff’s and other employees’ regular rate of pay for use in deciphering the correct overtime
15 rate of pay. Additionally, the incentive and bonus payments were also not factored into Plaintiff’s
16 and others’ regular rate for purposes of receiving meal and rest break premiums per the *Ferra v.*
Loews case.

17 10. AIR CULINAIRE also violated Labor Code § 226.7 and the appropriate Industrial
18 Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly
19 situated aggrieved employees with 10-minute rest periods for every four hours of work, or
20 majority portion thereof, throughout their employment. AIR CULINAIRE did not completely
21 relieve Plaintiff and others of all duty during said rest periods. AIR CULINAIRE did not pay to
22 Plaintiff and others one additional hour of pay at Plaintiff’s regular rate of compensation for each
23 workday that one or more statutory rest periods was not provided. It was not part of the company
24 policy for employees such as Plaintiff to take rest breaks. The concept of rest breaks was never
25 discussed with employees nor was it ever implemented as it was not company policy. Moreover,
26 it would not have been possible for employees such as Plaintiff to take such rest breaks due to
27 being understaffed and having to continuously tend to his cooking duties in preparing dishes. As
28 such, the culture as well as the policies and procedures of AIR CULINAIRE did not lend itself

1 to the employees receiving statutory rest breaks wherein they were relieved of all work duties.
2 The environment at AIR CULINAIRE was not conducive to receiving statutory rest breaks under
3 California law and timely, statutory rest breaks were not authorized or enforced.

4 11. AIR CULINAIRE violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
5 Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees,
6 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five
7 (5) hours of work throughout their employment. AIR CULINAIRE did not completely relieve
8 Plaintiff and other employees of all duty during said meal periods. AIR CULINAIRE did not
9 pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular
10 rate of compensation for each workday that one or more statutory meal periods was not provided.
11 The hourly, non-exempt employees would often not be able to receive their meal periods before
12 the 5th hour worked due to the workload and due to being in a fast-paced work environment.
13 Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break was not part
14 of the company culture and was not enforced by AIR CULINAIRE. Consequently, it was the
15 normal practice and custom of AIR CULINAIRE not to authorize, permit, and enforce timely
16 statutory meal periods. If AIR CULINAIRE had Plaintiff sign a meal period waiver, it would
17 not be valid and enforceable since Plaintiff and others generally worked more than a 6-hour shift.
18 If AIR CULINAIRE had Plaintiff sign an on-duty meal period agreement wherein Plaintiff
19 agreed to work through the meal periods, it would be invalid and unenforceable because the
20 nature of Plaintiff's job as a cook does not prevent him from taking a meal period and the
21 company could have hired "breakers" to relieve Plaintiff of his job duties so that he can actually
22 take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement
23 did not allow for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff
24 and others did not always receive statutory, timely meal periods during their employment. To
25 the extent that AIR CULINAIRE argues that employees receive meal break premium pay for
26 missed meal periods, that argument is inconsequential for PAGA penalty purposes since the
27 PAGA penalties are for the violations themselves, irrespective of whether an employee received
28 the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice

1 between providing either meal and rest breaks or an additional hour of pay.” See *Kirby v. Immoos*
2 *Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour
3 of pay does not excuse the violation; the employer has still committed a violation even if the
4 remedy for the violation has been paid. See *Wert v. U.S. Bancorp.*, (S.D. Cal. Mar. 22, 2016,
5 2016 WL 1110302 at *4). As such, the work environment and culture at AIR CULINAIRE was
6 not conducive to receiving consistent, timely, statutory meal breaks under California law.
7 Moreover, any meal or rest break premiums paid were not compensated at the weighted average
8 regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

9 12. Furthermore, during the relevant time period, and due to the above labor code violations,
10 AIR CULINAIRE failed to pay Plaintiff and other similarly situated aggrieved employees all
11 wages due to them within any time period specified by California Labor Code section 204. AIR
12 CULINAIRE was also in violation of California Labor Code section 226(a) by failing to include
13 pertinent information on the wage statements, including but not limited to, the correct hourly
14 rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net
15 wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and
16 end of the pay period, all employee identifying information, the correct and complete name and
17 address of the legal employer, and reimbursement for business expenses, among others. As such,
18 AIR CULINAIRE did not provide Plaintiff and other similarly situated aggrieved employees
19 with complete, accurate itemized wage statements.

20 13. During the relevant time period, AIR CULINAIRE also failed to keep accurate and
21 complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff
22 and others pursuant to California Labor Code sections 1174(d).

23 14. AIR CULINAIRE also violated Labor Code § 203 because it willfully failed to pay
24 Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation
25 of employment, either immediately upon involuntary termination, or within 72 hours of
26 resignation. These earned but unpaid wages include compensation for all hours worked,
27 including minimum wages, overtime compensation, and premium pay for missed meal and rest
28 breaks. In fact, Plaintiff did not timely receive his final paycheck upon being terminated.

15. During the relevant time period, Plaintiff and other aggrieved employees incurred

necessary, business-related expenses and costs that were not reimbursed by AIR CULINAIRE. These costs include, but are not limited to, use of personal phones for business-related purposes (taking photos of the dishes, for example) and uniforms/equipment, including knives, pans, utensils, and other kitchen supplies that Plaintiff brought into the workplace for use. Accordingly, AIR CULINAIRE was in violation of California Labor Code sections 2800 and 2802.

16. Furthermore, AIR CULINAIRE has also violated Labor Code Section 558 and has engaged in business practices which violate Business and Professions Code Section 17200.

17. In addition, Plaintiff would have causes of action against AIR CULINAIRE for violations for the Fair Employment and Housing Act (FEHA) in that Plaintiff was wrongfully terminated due to his physical disabilities, including issues with his vision (ocular paralysis, suffering from brain damage, as well as, having diabetes. AIR CULINAIRE was unequivocally aware of Plaintiff suffering a slip and fall at work and injuring his knee and right index finger. Due to Plaintiff's on-the-job injuries and physical disabilities, Plaintiff was treated differently and ultimately terminated in violation of California law. Moreover, Plaintiff was not provided reasonable accommodations despite the employer being aware of Plaintiff's multiple physical disabilities. Furthermore, Plaintiff was not afforded a good faith interactive process as Plaintiff's disabilities and accommodations were ignored and were not even given a thought.

18. Plaintiff has exhausted his administrative remedies. Prior to the filing of this lawsuit, Plaintiff filed a complaint with the Department of Fair Employment and Housing ("DFEH"), alleging claims in this complaint. The DFEH immediately issued to Plaintiff a right to sue letter.

FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

(California Industrial Welfare Commission Order 5-2001, California Code of Regulations Title 8 Section 11050, and California Labor Code Section 1198)

(Plaintiff against all named defendants and all DOE defendants)

19. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully alleged herein.

20. At all times relevant herein, Defendants were required to compensate their employees for

1 all hours worked upon reporting for work at the appointed time stated by the employer pursuant
2 to Industrial Welfare Commission Order 5-2001, California Code of Regulations, Title 8, Section
3 11050.

4 21. For the three (3) years preceding filing of this action, Defendants failed to compensate
5 Plaintiff for all hours worked.

6 22. Under the aforementioned wage order and regulations, Plaintiff is to recover
7 compensation for all hours worked but not paid by Defendants for the three (3) years preceding
8 the filing of this Complaint.

9 23. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
10 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
11 this Court.

12 24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
13 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled
14 to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable
15 attorney's fees and costs of suit.

16 25. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
17 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
18 amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PAY MINIMUM WAGES**

21 **(California Labor Code Sections 1194, 1194.2, 1197)**

22 **(Plaintiff against all named defendants and all DOE defendants)**

23 26. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
24 fully alleged herein.

25 27. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
26 to suffer or permit a California employee to work without paying wages at the minimum wage
27 rate for all hours worked as required by the applicable Industrial Welfare Commission
28 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title
8, Section 11050, subdivision 4.

1 28. Pursuant to IWC Wage Order no. 5-2001, subdivision 2(K), at all relevant times, “hours
2 worked” included “the time during which an employee is subject to the control of an employer,
3 and includes all the time the employee is suffered or permitted to work, whether or not required
4 to do so...”

5 29. During his employment, Plaintiff was regularly required as a matter of uniform policy
6 and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid
7 less than the minimum wage rate by Defendants for hours worked in violation of California
8 Labor Code Section 1197 and the applicable California Industrial Wage Commission wage
9 order(s).

10 30. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
11 permitted to work by Defendants. Defendants’ acts or omissions in failing to adequately
12 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
13 to believe that their acts or omissions were not contrary to California law.

14 31. For all hours worked by Plaintiff for which he was paid less than the minimum wage rate
15 by Defendants, Plaintiff is entitled to not less than the applicable California minimum wage rate
16 and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount equal to unpaid
17 minimum wages and interests thereon. Pursuant to Labor Code Section 1194, Plaintiff is also
18 entitled to attorney’s fees, costs and interests according to proof.

19 32. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
20 along with any allowable interest, penalties, attorney’s fees, and costs according to proof at
21 trial.

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PAY OVERTIME**

24 **(California Industrial Welfare Commission Order 5-2001, California Code of**
25 **Regulations Title 8 Section 11050; California Labor Code Section 510)**
26 **(Plaintiff against all named defendants and all DOE defendants)**

27 33. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
28 fully alleged herein.

34. Pursuant to Industrial Welfare Commission Order No. 5-2001, Cal. Code of Regs., Title

1 8, Section 11050, for the period of Plaintiff's employment, Defendants were required to
2 compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the
3 regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week,
4 and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a
5 day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

6 35. Plaintiff was a non-exempt employee entitled to the protections of the California
7 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations, Title 8,
8 Section 11050.

9 36. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in
10 a single workweek on numerous occasions.

11 37. Plaintiff was entitled to the above overtime premiums.

12 38. Defendants did not pay Plaintiff premium wages of at least one and one-half times
13 Plaintiff's regular rate of pay for hours worked past eight (8) in a day.

14 39. Defendants did not pay Plaintiff premium wages of at least one and one-half times
15 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

16 40. Plaintiff worked at least one pay period in which he was not properly paid overtime
17 within the three (3) years prior to the initiation of this lawsuit.

18 41. Defendants know or should know the actual dates of overtime worked, the amount of
19 overtime worked, and the amount of unpaid overtime due.

20 42. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
21 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
22 Court.

23 43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
24 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the
25 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
26 reasonable attorney's fees and costs of suit.

27 44. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
28 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
trial.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **(California Labor Code Section 226)**

4 **(Plaintiff against all named defendants and all DOE defendants)**

5 45. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
6 fully alleged herein.

7 46. Pursuant to California Labor Code Section 226, every employer must furnish each
8 employee an itemized statement of wages and deductions at the time of payment of wages.

9 47. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
10 accurately reflected all information required by Labor Code Section 226, including but not
11 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
12 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
13 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed to
14 maintain and provide accurate itemized wage statements to Plaintiff in accordance with
15 California Labor Code Section 226(a).

16 48. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
17 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
18 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
19 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
20 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
21 the 1-year period immediately preceding the date this lawsuit was filed.

22 49. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained
23 damages, including loss of earnings, in an amount to be established at trial. As a further direct
24 and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff is entitled to
25 recover penalties, in an amount to be established at trial, as well as costs and attorney's fees
26 pursuant to statute.

27 50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
28 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
trial.

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201, 203)

(Plaintiff against all named defendants and all DOE defendants)

51. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully alleged herein.

52. Pursuant to California Labor Code Section 201(a), an employer who discharges an employee must immediately pay for all compensation due and owing.

53. Pursuant to California Labor Code Section 202, when an employee resigns, the employer must pay all compensation due and owing within 72 hours of resignation, or on the employee's last day of work, if the employee gives more than 72 hours notice of resignation.

54. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay, without abatement or reduction, any wages of an employee whose employment ends, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; however, the wages shall not continue for more than 30 days for failure to pay an employee owed wages.

55. After Plaintiff's employment with Defendants ended and after Plaintiff was terminated from his employment, Defendants willfully refused and continue to refuse to pay his unpaid wages as required by Labor Code Section 203.

56. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately preceding the filing of this lawsuit.

57. Under this cause of action, Plaintiff also prays for attorney's fees and costs under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

58. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

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(California Labor Code Section 204)

59. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully alleged herein.

60. California Labor Code Section 204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work.

61. At all times relevant during the liability period, Defendants failed to pay Plaintiff the full amount of all owed wages when due as required by California Labor Code Section 204.

62. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is informed, believes, and thereon alleges, that all times relevant during the liability period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked, including overtime hours, the minimum wage, and premium pay for missed meal and rest breaks.

63. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount, subject to proof, to the extent he was not paid all wages each pay period. The precise amount of unpaid wages is not presently known to Plaintiff but can be determined directly from Defendants' records or indirectly based on information from Defendants' records.

64. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

FAILURE TO GIVE REST BREAKS

65. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully alleged herein.

66. Plaintiff brings this cause of action under the following laws, for the following reasons:

a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which provides that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The

1 authorized rest period time shall be based on the total hours worked daily at the rate
2 of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

3 b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which provides
4 that if an employer fails to provide an employee a rest period in accordance with the
5 applicable provisions of this order, the employer shall pay the employee one (1) hour
6 of pay at employee's regular rate of compensation for each workday that the rest
7 period is not provided;

8 c. Title 8 of the California Code of Regulations sections 11050(20)(A), which penalizes
9 the employer \$50.00 for each initial violation, per employee, of any provision of the
10 Wage Order, and \$100.00 for each additional violation thereafter per employee; and

11 d. California Labor Code section 226.7, which states that (a) no employer shall require
12 any employee to work during any rest period mandated by an applicable order of the
13 Industrial Welfare Commission, and (b) if an employer fails to provide an employee
14 a rest period in accordance with an applicable order of the Industrial Welfare
15 Commission, the employer shall pay the employee one (1) additional hour of pay at
16 employee's regular rate of compensation for each work day that the rest period is not
17 provided.

18 67. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest
19 break after every four (4) hours of work or major fraction thereof, as required by California law.

20 68. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
21 regulations, and wage orders alleged in this cause of action along with any allowable interest,
22 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the
23 foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

24 69. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees
25 as well as interest under Labor Code section 218.6.

26 70. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
27 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
28 trial.

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO GIVE MEAL BREAKS**

3 **(Plaintiff against all named defendants and all DOE defendants)**

4 71. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
5 fully alleged herein.

6 72. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 7 a. California Labor Code section 512(a), which requires that employees be given a 30-
8 minute uninterrupted meal break after five (5) hours of work, and a second
9 uninterrupted meal break after ten (10) hours of work;
- 10 b. California Labor Code section 226.7, which states that (a) no employer shall require
11 any employee to work during any meal period mandated by an applicable order of
12 the Industrial Welfare Commission, and (b) if any employer fails to provide an
13 employee a meal period in accordance with an applicable order of the Industrial
14 Welfare Commission, the employer shall pay the employee one (1) additional hour
15 of pay at the employee's regular rate of compensation for each workday that the meal
16 period is not provided;
- 17 c. California Industrial Welfare Commission Order No. 5 section 11(A), as codified
18 under Title 8 of the California Code of Regulations Section 11050, which states that
19 an employer may not employ an employee for a work period of more than five (5)
20 hours without providing the employee with a meal period of not less than 30 minutes,
21 except that when a work period of not more than six (6) hours will complete the day's
22 work the meal period may be waived by mutual consent of employer and employee.
- 23 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as
24 codified under Title 8 of the California Code of Regulations Section 11050, which
25 requires an employer to maintain records documenting its employees' meal periods;
- 26 e. California Industrial Welfare Commission Wage Order No. 5 Section 20(A), as
27 codified under California Code of Regulations Section 11050, which penalizes the
28 employer \$50.00 for each initial violation, per employee, of any provision of the
Wage Order, and \$100.00 for each additional violation thereafter per employee; and

1 f. California Labor Code section 1171 and 1173, which have given the California Labor
2 Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5) as
3 enforceable law.

4 73. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
5 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
6 take a second relieved meal break after ten (10) hours of work, as required by California law.
7 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
8 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that
9 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that
10 the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty.
11 California Labor Code section 226.7 provides that employers may not require their employees
12 to work through their meal periods. California Labor Code section 226.7 and California Code of
13 Regulations section 11050 requires that if the employer fails to provide the employee with an
14 uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each
15 work day that the meal period is not given.

16 74. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
17 regulations, and wage orders alleged in this cause of action along with any allowable interest,
18 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
19 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

20 75. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
21 fees as well as interest under Labor Code section 218.6.

22 76. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
23 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
24 trial.

25 **NINTH CAUSE OF ACTION**

26 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

27 **(Plaintiff against all named Defendants and all DOE defendants)**

28 77. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
alleged herein.

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

4 79. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
5 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of
6 completing his job duties, which were not reimbursed by Defendants. These costs include, but
7 are not limited to, having to use personal phones for business-related purposes (taking photos of
8 the dishes, for example) and having to purchase uniforms/equipment, including knives, pans,
9 utensils, and other kitchen supplies for the job. Plaintiff is entitled to reimbursement for these
10 necessary expenditures, plus interest and attorney’s fees and costs, under Labor Code
11 section 2802.

12 **TENTH CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
15 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197,**
16 **1198, 2802)**

17 **(Plaintiff against all named defendants and all DOE defendants)**

18 80. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
19 alleged herein.

20 81. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
21 Defendants of the specific violations of the California Labor Code that Defendants and DOE
22 defendants have violated and continue to violate.

23 82. Pursuant to California Labor code section 2699.3, no response was received from the
24 LWDA within 65 days of the postmark date of the above-alleged letter.

25 83. Plaintiff therefore has exhausted all administrative remedies required of him under
26 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
27 cause of action and pursue penalties in a representative action for Defendants’ violations of the
28 Labor Code.

84. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that

1 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
2 departments, divisions, commissions, boards, agencies, or employees for violation of the code
3 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
4 behalf of himself or herself and other current or formal employees pursuant to the procedures
5 specified in California Labor Code section 2699.3.

6 85. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
7 violator and had one or more of the alleged violations committed against him, and therefore is
8 properly suited to represent the interests of other current and former hourly, non-exempt
9 employees who worked for AIR CULINAIRE WORLDWIDE, LLC at any of their California
10 locations during the relevant PAGA Period.

11 86. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks penalties
12 under California Labor Code sections 2698 and 2699 because of Defendants’ violations of
13 numerous provisions of the California Labor Code as alleged in this Complaint.

14 87. Plaintiff therefore has exhausted all administrative remedies required of him under
15 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
16 cause of action and pursue penalties in a representative action for Defendants’ violations of the
17 Labor Code.

18 88. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants
19 for violating the Labor Code.

20 89. California Labor Code section 558 establishes a civil penalty as follows: Any employer
21 or other person action on behalf of an employer who violates, or causes to be violated, a section
22 of this chapter or any provision regulating hours and days of work in any order of the Industrial
23 Welfare Commission (including the “Hours and Days of Work” section of the Wage Order) shall
24 be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each underpaid
25 employee for each pay period for which the employee was underpaid ...; (2) for each subsequent
26 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which
27 the employee was underpaid ...;

28 90. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not

1 seeking individual/victim specific relief or underpaid wages under this particular cause of action.

2 91. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
3 law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
4 the following:

5 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3
6 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, via 2698 and 2699, and any
7 other Labor Codes and Industrial Welfare Commission Wage Orders (No. 5) violated based
8 on the facts alleged in this Complaint.

9 92. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
10 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees
11 as alleged herein in an amount to be shown according to proof at trial and within the
12 jurisdictional limits of this Court.

13 **ELEVENTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE PERSONNEL RECORDS**

15 **(Plaintiff against all named Defendants and all DOE defendants)**

16 93. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
17 alleged herein.

18 94. Labor Code section 1198.5 dictates "every current and former employee, or his or her
19 representative, has the right to inspect and receive a copy of the personnel records that the
20 employer maintains relating to the employee's performance or to any grievance concerning the
21 employee."

22 95. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the employer shall
23 make the contents of those personnel records available for inspection to the current or former
24 employee, or his or her representative, at reasonable intervals and at reasonable times..." On
25 information and belief, Defendants intentionally failed to provide Plaintiff with personnel
26 records when requested by Plaintiff via letter on January 10, 2023, as required by law. Plaintiff
27 requested his personnel records in accordance with California Labor Code section 1198.5(k) on
28 January 10, 2023 via certified U.S. mail.

96. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his records

1 within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered
2 and continues to suffer substantial losses related to Defendants' failure to provide personnel
3 records.

4 97. Plaintiff seeks all available remedies for Defendants' violations including, but not
5 limited to penalties, and costs to the extent permitted by law and according to proof at trial.
6 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
7 amount of \$750.00, along with costs and attorney's fees.

8 **TWELFTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE PAY RECORDS**

10 **(Plaintiff against all named Defendants and all DOE defendants)**

11 98. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
12 fully alleged herein.

13 99. Labor Code section 226 sub-section (b) dictates "an employer...shall afford current and
14 former employees the right to inspect or copy records pertaining to their employment, upon
15 reasonable request to the employer..."

16 100. Moreover, pursuant to sub-section (c) of Labor Code section 226, "an employer
17 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
18 pertaining to a current or former employee shall comply with the request as soon as practicable,
19 but no later than 21 calendar days from the date of the request." On information and belief,
20 Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff
21 via letter, on January 10, 2023, and as required by law. Plaintiff requested his pay records in
22 accordance with California Labor Code section 226 on January 10, 2023, via U.S. certified mail.
23 Defendants failed to provide Plaintiff with an opportunity to inspect or copy his pay records
24 within 21 days.

25 101. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered
26 and continues to suffer substantial losses related to Defendants' failure to provide pay records.
27 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
28 amount of \$750.00, along with costs and attorney's fees.

102. Plaintiff seeks all available remedies for Defendants' violations including, but not

1 limited to, penalties and costs to the extent permitted by law and according to proof at trial.

2 **THIRTEENTH CAUSE OF ACTION**

3 **DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY**

4 **IN VIOLATION OF FEHA**

5 **(Plaintiff against AIR CULINAIRE WORLDWIDE, LLC and all DOE Defendants)**

6 103. Plaintiff incorporates by reference each and every paragraph of this Complaint as
7 if fully alleged herein.

8 104. Defendants and DOES 1 to 25, inclusive, are covered employers under
9 California's Fair Employment and Housing Act.

10 105. California Government Code section 12926(m) has established a "broad
11 definition" of physical disability: disability protections under the Fair Employment and Housing
12 Act ("FEHA") even extend to "perceived" physical disabilities. *Id.* Under the law of this state,
13 "working" is a major life activity. See section 12926.1(c).

14 106. Plaintiff's multiple physical disabilities (issues with his vision, brain damage,
15 diabetes, on the job injuries to his right knee/right index finger) which was debilitating, and
16 which limited a major life activity, qualify as disabilities under FEHA, and Plaintiff was entitled
17 to its protection.

18 107. Defendants knew of Plaintiff's multiple physical disabilities and violated
19 California Government Code section 12940 et. seq. by discriminating against Plaintiff on the
20 basis of his disabilities.

21 108. As a direct and proximate result of the aforementioned acts and omissions of
22 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
23 loss of income (past and future), loss of employment benefits (past and future), general and
24 compensatory damages (past and future), mental pain and anguish and emotional distress (past
25 and future), and will continue to suffer in the future, in an amount to be proved at trial.

26 109. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
27 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
28 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
their workers' right to work in an environment in which personnel decisions and company

1 policies are made without regard to physical disability, so as to justify the imposition of punitive
2 damages to punish and set an example of said Defendants.

3 110. As a proximate result of the foregoing conduct, which violated the provisions of
4 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
5 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

6 **FOURTEENTH CAUSE OF ACTION**

7 **FAILURE TO ACCOMMODATE PHYSICAL DISABILITY IN VIOLATION OF**

8 **FEHA**

9 **(Plaintiff against AIR CULINAIRE WORLDWIDE, LLC and all DOE Defendants)**

10 111. Plaintiff incorporates by reference each and every paragraph of this Complaint as
11 if fully alleged herein

12 112. California Government Code section 12940(p) provides that it is unlawful for an
13 employer to fail to make reasonable accommodation for the known physical disability of an
14 employee.

15 113. Defendants failed to make reasonable accommodation of Plaintiff's multiple
16 physical disabilities of which Defendants were unequivocally aware.

17 114. As a direct and proximate result of the aforementioned acts and omissions of
18 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
19 loss of income (past and future), loss of employment benefits (past and future), general and
20 compensatory damages (past and future), mental pain and anguish and emotional distress (past
21 and future), and will continue to suffer in the future, in an amount to be proved at trial.

22 115. The foregoing conduct engaged in by Defendants and each of their directors,
23 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
24 ratified, and carried on with a conscious and willful disregard of their workers' right to receive
25 reasonable accommodations, so as to justify the imposition of punitive damages to punish and
26 set an example of said Defendants.

27 116. As a proximate result of the foregoing conduct, which violated the provisions of
28 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
fees and costs in the prosecution of this claim, in an amount to be proven at trial.

1 **FIFTEENTH CAUSE OF ACTION**

2 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA**

3 **(Plaintiff against AIR CULINAIRE WORLDWIDE, LLC and all DOE Defendants)**

4 117. Plaintiff incorporates by reference each and every paragraph of this Complaint as
5 if fully alleged herein.

6 118. California Government Code section 12940(n) provides that it is unlawful for an
7 employer to fail to engage in a timely, good faith, interactive process with an employee to
8 determine effective accommodations for that employee's physical disability.

9 119. Defendants failed to engage in a timely, good faith, interactive process with
10 Plaintiff to determine effective reasonable accommodations for Plaintiff's known multiple
11 physical disabilities.

12 120. As a direct and proximate result of the aforementioned acts and omissions of
13 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
14 loss of income (past and future), loss of employment benefits (past and future), general and
15 compensatory damages (past and future), mental pain and anguish and emotional distress (past
16 and future), and will continue to suffer in the future, in an amount to be proved at trial.

17 121. The foregoing conduct engaged in by Defendants and each of their directors,
18 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
19 ratified, and carried on with a conscious and willful disregard of their workers' right to engage
20 in the interactive process and receive reasonable accommodations, so as to justify the imposition
21 of punitive damages to punish and set an example of said Defendants.

22 122. As a proximate result of the foregoing conduct, which violated the provisions of
23 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
24 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

25 **SIXTEENTH CAUSE OF ACTION**

26 **RETALIATION IN VIOLATION OF FEHA**

27 **(Plaintiff against AIR CULINAIRE WORLDWIDE, LLC and all DOE Defendants)**

28 123. Plaintiff incorporates by reference each and every paragraph of this Complaint as
if fully alleged herein.

1 124. At all times herein mentioned, Government Code section 12940 et. seq. was in
2 full force and effect and was binding upon Defendants and each of them. Said statute imposes
3 certain duties upon Defendants concerning discrimination and retaliation against persons, such
4 as Plaintiff, on the basis of physical disability. Said statutes were intended to prevent the type of
5 injury and damage set forth herein. Plaintiff was, at all times herein mentioned, a member of the
6 class of persons intended to be protected by said statutes. As alleged above, Plaintiff reported his
7 physical disabilities (vision changes, brain damage diabetes, and on the job injuries to his right
8 knee and right index finger) to management and was retaliated against and was terminated from
9 his employment as a result of his physical disabilities.

10 125. As a direct and proximate result of Defendants' conduct, Plaintiff has been
11 harmed in that Plaintiff has suffered the loss of wages, salary, and benefits, among other things.
12 As a result, Plaintiff has suffered such damages in an amount according to proof.

13 126. As a further direct and proximate result of the conduct of Defendants, and each
14 of them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish and
15 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
16 such damages in an amount according to proof.

17 127. In committing the foregoing acts, Defendants have been guilty of oppression,
18 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
19 punitive damages in a sum appropriate to punish and make an example out of the foregoing
20 Defendants.

21 128. The acts of oppression, fraud, and/or malice, were engaged in by employees of
22 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
23 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
24 wrongful conduct for which an award of punitive damages is sought, and/or was personally
25 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
26 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
27 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff
28 to punitive and exemplary damages against each of the Defendants in accordance with California
Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant

1 129. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
2 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
3 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
4 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
5 award of attorneys' fees and costs.

6 **SEVENTEENTH CAUSE OF ACTION**

7 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION**

8 **OF FEHA**

9 **(Plaintiff against AIR CULINAIRE WORLDWIDE, LLC and all DOE Defendants)**

10 130. Plaintiff incorporates by reference each and every paragraph of this Complaint as
11 if fully alleged herein.

12 131. At all times herein mentioned, FEHA, California Government Code section
13 12940(k), was in full force and effect and was binding on Defendants. This statute states that it
14 is an unlawful employment practice in California for an employer to "fail to take all reasonable
15 steps necessary to prevent discrimination and harassment from occurring."

16 132. During the course of Plaintiff's employment, Defendants failed to prevent their
17 employees, including management, from engaging in intentional actions that resulted in Plaintiff
18 being treated less favorably and eventually being terminated because of Plaintiff's protected
19 status (i.e. his physical disabilities). During the course of Plaintiff's employment, Defendants
20 failed to prevent their employees from engaging in unjustified employment practices against
21 employees in such protected classes. During the course of Plaintiff's employment, Defendants
22 failed to prevent a pattern and practice by its employees of intentional discrimination and
23 retaliation on the basis of disability, and/or other protected status and/or protected activity.

24 133. Plaintiff believes and, on that basis, alleges that his physical disabilities, and other
25 protected status and/or protected activity in informing his employer about his physical
26 disabilities was a substantial motivating factor in Defendants' employees' discriminating against
27 him and retaliating against him by terminating his employment.

28 134. As a direct and proximate result of the aforementioned acts and omissions of
Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,

1 loss of income (past and future), loss of employment benefits (past and future), general and
2 compensatory damages (past and future), mental pain and anguish and emotional distress (past
3 and future), and will continue to suffer in the future, in an amount to be proved at trial.

4 135. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
5 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
6 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
7 their workers' right to work in an environment in which personnel decisions and company
8 policies are made without regard to physical disability, so as to justify the imposition of punitive
9 damages to punish and set an example of said Defendants.

10 136. As a proximate result of the foregoing conduct, which violated the provisions of
11 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
12 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

13 **EIGHTEENTH CAUSE OF ACTION**

14 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

15 **(Plaintiff against AIR CULINAIRE WORLDWIDE, LLC and all DOE defendants)**

16 137. Plaintiff incorporates by reference each and every paragraph of this Complaint
17 as if fully alleged herein.

18 138. At all times during his employment with Defendants, Plaintiff performed his
19 duties with the utmost diligence and competence.

20 139. Plaintiff is informed and believes and thereon alleges that Defendants' decision
21 to discriminate and retaliate against him and terminate his employment, as alleged herein, was
22 motivated by Plaintiff's disability and Plaintiff having to miss work due to his disability.

23 140. Plaintiff's employment was wrongfully terminated on or around October 31, 2022
24 in violation of the fundamental public policy of the State of California with respect to
25 discriminating and retaliating against an employee on account of his physical disability.

26 141. Moreover, Plaintiff was forced to hire an attorney to assist him to end these illegal
27 activities.

28 142. Said conduct violated statutory and constitutional expressions of public policy

1 including, but not limited to, the FEHA, California Labor Code, and the California Constitution,
2 Article 1 section 8.

3 143. As set forth above, said actions by Defendants were wrongful and in violation of
4 the fundamental principles of the public policy of the State of California as reflected in its laws,
5 objectives and policies. Said statutes and constitutional expressions of public policy include, but
6 are not limited to, the FEHA, California Labor Code, and the California Constitution, Article 1
7 section 8. These laws inure to the benefit of the public at large, and not just the private interests
8 of the employers and employees whom they govern or protect.

9 144. As a direct and proximate result of the aforementioned acts and omissions of
10 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
11 loss of income (past and future), loss of employment benefits (past and future), general and
12 compensatory damages (past and future), mental pain and anguish and emotional distress (past
13 and future), and will continue to suffer in the future, in an amount to be proved at trial.

14 145. The foregoing conduct engaged in by Defendants and each of their directors,
15 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
16 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
17 an environment free of retaliation, so as to justify the imposition of punitive damages to punish
18 and set an example of said Defendants.

19 **NINETEENTH CAUSE OF ACTION**

20 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

21 **(California Business and Professions Code Section 17200)**

22 **(Plaintiff against AIR CULINAIRE WORLDWIDE, LLC and all DOE defendants)**

23 146. Plaintiff incorporates by reference each and every paragraph of this Complaint
24 as if fully alleged herein.

25 147. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
26 constitute unfair and unlawful business practices under California Business and Professions
27 Code Section 17200, et seq.

28 148. Defendants' violations of the FEHA, California labor laws and the Labor Code

1 constitutes a business practice because it was done repeatedly over a significant period of time
2 in a systematic manner that was detrimental to Plaintiff.

3 149. For the four years preceding the filing of this action, Plaintiff has suffered
4 damages and request damages and/or restitution of all monies and profits to be disgorged from
5 Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of
6 this Court.

7 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
8 follows:

- 9 1. For compensatory damages including lost past and future wages, regular wages,
10 overtime, and all other sums of money, including employment benefits, together with
11 interest on said amounts, and any other economic injury to Plaintiff, according to proof;
- 12 2. For general damages according to proof;
- 13 3. For special and consequential damages to the extent allowed by law;
- 14 4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
15 at trial;
- 16 5. For an award of punitive damages against Defendant AIR CULINAIRE
17 WORLDWIDE, LLC according to proof;
- 18 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
19 subject to proof at trial;
- 20 7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
21 proof at trial;
- 22 8. For restitution and disgorgement for all unfair business practices by Defendant AIR
23 CULINAIRE WORLDWIDE, LLC against Plaintiff in an amount subject to proof at
24 trial;
- 25 9. For an order enjoining Defendant AIR CULINAIRE WORLDWIDE, LLC from further
26 unfair and unlawful business practices in violation of Business and Professions Code
27 Sections 17200, et seq.;
- 28 10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;

11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
12. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA claim;
13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;
14. For the imposition of civil penalties and/or statutory penalties;
15. For all interest as allowed by law;
16. For all costs and disbursements incurred in this suit;
17. Reasonable attorney's fees where available by law, including but not limited to, pursuant to the FEHA, the California Labor Code and/or other applicable laws; and
18. For such other and further relief as this Court may deem proper.

DATED: May 4, 2023

MESSRELIAN LAW INC.

By Maralle Messrelian
Harout Messrelian, Esq.
Maralle Messrelian, Esq., Of Counsel
Attorneys for Plaintiff Eduardo Martinez Guizar

DEMAND FOR JURY TRIAL

Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

DATED: May 4, 2023

MESSRELIAN LAW INC.

By Maralle Messrelian
Harout Messrelian, Esq.
Maralle Messrelian, Esq., Of Counsel
Attorneys for Plaintiff Eduardo Martinez Guizar

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Harout Messrelian, Esq. (272020); Maralle Messrelian, Esq. (SBN 316974)
Messrelian Law Inc., 500 N. Central Ave., Suite 840, Glendale, CA 91203

TELEPHONE NO.: 818-484-6531

FAX NO. (Optional): 818-956-1983

E-MAIL ADDRESS: hm@messrelianlaw.com, maralle@messrelianlaw.com

ATTORNEY FOR (Name): Plaintiff, Eduardo Martinez Guizar

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

STREET ADDRESS: 191 N. First Street

MAILING ADDRESS: 191 N. First Street

CITY AND ZIP CODE: San Jose, CA 95113

BRANCH NAME: Downtown Superior Court

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 5/4/2023 6:08 PM
Reviewed By: Y. Chavez
Case #23CV415879
Envelope: 11892745**

CASE NAME:

Eduardo Martinez Guizar v. Air Culinaire Worldwide, 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: 23CV415879

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 (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

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): 19

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: 05/04/2023

Maralle Messrelian, Esq.

(TYPE OR PRINT NAME)



Maralle Messrelian

(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

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

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 North First St., San José, CA 95113

CASE NUMBER: 23CV415879

PLEASE READ THIS ENTIRE FORM

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of <_CountyName_> Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 201 North First Street, San José (408-882-2900 x-2926).

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Pennypacker, Evette Department: 06

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: 10/03/2023 Time: 215pm in Department: 06

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: Time: in Department:

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

Reset Form