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on behalf of himself and all others similarly situated

**ELECTRONICALLY FILED**

Superior Court of California,  
County of San Diego

**06/17/2024** at 04:31:00 PM

Clerk of the Superior Court  
By Isaiah Irizarry, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN DIEGO**

EMILIO RODRIGUEZ, an individual, on  
behalf of himself and others similarly situated,

Plaintiff,

vs.

A M CASTANEDA, INCORPORATED,  
d/b/a CASTANEDA'S MEXICAN FOOD, a  
California corporation and DOES 1 through  
50, inclusive,

Defendants.

Case No.: 37-2024-00017527-CU-OE-CTL

CLASS ACTION

Assigned for All Purposes To:

Hon. Carolyn Caietti

Dept.: C-70

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for All Hours Worked;
2. Failure to Pay Wages and Overtime under Labor Code § 510;
3. Meal Period Liability, Labor Code § 226.7;
4. Rest-Break Liability, Labor Code § 226.7;
5. Violation of Labor Code § 226(a);
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Maintain Required Records;
10. Failure to Produce Requested Employment Records under Labor Code §§ 226, 1198.5;
11. Failure to Reimburse Necessary Business Expenses under Labor Code § 2802;
12. Violation of Business & Professions Code § 17200 *et seq.*; and
13. Penalties under PAGA Labor Code § 2698.

**DEMAND FOR JURY TRIAL**

Original Complaint Filed: April 12, 2024

Trial Date: None Set

1 Plaintiff EMILIO RODRIGUEZ (hereinafter “Plaintiff”), on behalf of himself and all  
2 other similarly situated non-exempt, hourly employees employed by Defendants in California  
3 during the relevant period (collectively, “Employees”; individually, “Employee”) complains of  
4 Defendants as follows:

### 5 INTRODUCTION

6 1. Plaintiff brings this action on behalf of himself and all current and former  
7 Employees within the State of California who, at any time four years prior to the filing of this  
8 lawsuit, are or were employed as non-exempt, hourly employees by Defendants AM  
9 CASTANEDA, INCORPORATED, d/b/a CASTANEDA’S MEXICAN FOOD, a California  
10 Corporation and DOES 1 through 50 (all defendants being collectively referred to herein as  
11 “Defendants”). Plaintiff alleges that Defendants violated various provisions of the California  
12 Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and California  
13 Business & Professions Code, and seeks redress for these violations.

14 2. Plaintiff worked as a restaurant cashier and server at one of Defendants’ facilities  
15 and locations in California. He and the other Class members were employed by Defendants as  
16 non-exempt, hourly employees at Defendants’ restaurant locations and facilities in California,  
17 including in positions related to taking orders, cashier work, stocking, mopping, sweeping,  
18 serving, and providing other restaurant related services to Defendants’ customers. Plaintiff  
19 worked at Defendants’ behest without being paid all wages due and without being provided all  
20 required breaks. More specifically, Plaintiff and the other similarly situated Class members were  
21 employed by Defendants and shared similar job duties and responsibilities, were subjected to the  
22 same policies and practices, and endured similar violations at the hands of Defendants as the  
23 other Employees who served in similar and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to work off the  
25 clock and failed to record accurate time worked by these Employees, failed to pay them at the  
26 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or  
27 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that  
28 prevented them from learning of these unlawful pay practices. Defendants also failed to provide

1 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain  
2 under Defendants' control and were not provided with the opportunity to take full uninterrupted,  
3 timely, and duty-free rest periods and meal breaks, as required by the Labor Code and the  
4 applicable paragraphs of the IWC Wage Orders.

5 4. Defendant AM CASTANEDA, INCORPORATED, d/b/a CASTANEDA'S  
6 MEXICAN FOOD ("Castaneda") is a California corporation that lists its principal address with  
7 the California Secretary of State in Chula Vista, San Diego County, California. Defendant  
8 Castaneda's Yelp Page explains that they are a Mexican restaurant that is open 24 hours per day.  
9 Berock-inv.com states that "Castaneda's Mexican food is a 27-unit family owned business that  
10 operates in San Diego, Riverside, San Bernardino, and Imperial counties in Southern California."

11 5. This Court has jurisdiction over this Action pursuant to California Code of Civil  
12 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought  
13 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California  
14 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district  
15 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the  
16 obligations and liabilities giving rise to this lawsuit occurred, at least in part, in San Diego  
17 County, where Defendants operate restaurants for California customers and where Castaneda's  
18 principal offices are located.

19 6. The true names and capacities, whether individual, corporate, associate, or  
20 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently  
21 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code  
22 of Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants  
23 designated herein as Does 1 through 50, inclusive, and each of them, is legally responsible in  
24 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend  
25 this Complaint to reflect the true names and capacities of the Defendants designated herein as  
26 Does 1 through 50 when their identities become known.

27 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in  
28 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried

1 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of  
2 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted  
3 in all respects as the employers or joint employers of Employees. Defendants, and each of them,  
4 exercised control over the wages, hours or working conditions of Employees, created and  
5 implemented the policies and practices that governed the employment of Plaintiff and the Class  
6 members and dictated their job duties and responsibilities, or otherwise suffered or permitted  
7 Plaintiff and the other Employee Class members to work, or engaged, thereby creating a  
8 common law employment relationship, with the Employee Class members. Therefore,  
9 Defendants, and each of them, employed or jointly employed the Employee Class members.

10 **FACTUAL BACKGROUND**

11 8. The Employees who comprise the Class, including Plaintiff, are non-exempt  
12 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare  
13 Commission (“IWC”). During the period of four years prior to the filing of this action through  
14 its resolution, Plaintiff and the Class members were either not paid by Defendants for all hours  
15 worked or were not paid at the appropriate minimum, regular and overtime rates, including for  
16 meal period and rest break premium payments. Plaintiff also contends that Defendants failed to  
17 pay Plaintiff and the Class members all wages due and owing, including by miscalculating  
18 wages owed and by requiring off the clock work, failing to provide meal and rest breaks, and  
19 failing to furnish accurate wage statements and timely pay all wages owed, all in violation of  
20 various provisions of the California Labor Code and applicable paragraphs of the IWC Wage  
21 Orders.

22 9. During the course of Plaintiff and the Class members’ employment with  
23 Defendants, they were not paid all wages they were owed, including for all work performed  
24 (resulting in “off the clock” work) and for all their overtime hours worked, or were not paid at  
25 the correct rates. This has resulted in systematic and ongoing violations of the California Labor  
26 Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ other  
27 non-exempt, hourly employees as medical assistants and scribes based out of Defendants’  
28 facilities in California.

1           10.     For much of his employment, Plaintiff was employed by Defendants as a cashier at  
2 one of Defendants' California restaurants. Plaintiff generally worked over forty hours per week,  
3 four to five days per week, which resulted in shifts of approximately eight hours in duration.  
4 Plaintiff's shifts were generally scheduled from 6:00 p.m. to 2 a.m. or 8:00 p.m. to 2:00 a.m.

5           11.     The nature of Defendants' operations and its policies and practices require that  
6 Employees endure significant off-the-clock work. Defendants' facilities included timekeeping  
7 systems incorporating electronic recording of time punches by Employees logging onto  
8 Defendants' computers and cash registers to record their time entries.

9           12.     The failure to maintain accurate timekeeping and payroll records perpetrated by  
10 Defendants has also been exacerbated by off the clock work Defendants required their  
11 Employees to endure. Due to the heavy volume of work, Plaintiff was habitually compelled to  
12 work through parts of his meal periods in order to complete his work. Plaintiff was required to  
13 wear a headset to be constantly on call and under Defendants' control during all meal and rest  
14 periods. There are two cashiers, two cooks, and a manager (who is in the office) at any given  
15 shift and they were constantly understaffed. Defendants were well aware that their facilities  
16 were understaffed and as a result, employees were required to work additional hours that were  
17 often uncompensated or otherwise underpaid. The cashiers also took the ordered food to the  
18 patron's tables, and they were often multi-tasking out of necessity. Defendants required that all  
19 overtime hours must be pre-approved by Defendants' managers, and generally discouraged  
20 overtime by pressuring Employees to perform more and more work during their regularly  
21 scheduled hours.

22           13.     If Plaintiff failed to complete all his work during his scheduled hours, he would  
23 be forced to incur overtime hours which Defendants' management frowned upon and rarely  
24 authorized. Plaintiff was therefore forced to work through parts of his meal periods to complete  
25 all his work and to avoid incurring an amount of overtime that Defendants would not accept and  
26 pay. These additional hours worked generally went uncompensated despite the fact Plaintiff was  
27 under Defendants' control or otherwise required to continue performing job duties or was  
28 standing by to perform them. Plaintiff and other Employees' rest breaks were also routinely

1 interrupted or not provided at all due to pressing work demands. Due to understaffing and the  
2 heavy volume of work, Employees were generally not permitted to take any rest breaks.

3 14. Additionally, Plaintiff and the Class members were also required to work or  
4 otherwise remain under Defendants' control after their shift end times, including on-site and  
5 through after-hours work-related communications and other work requirements Defendants  
6 required them to perform off the clock. Further, Defendants required Plaintiff and the Class  
7 Members to be available on their personal cell phones while off-the-clock to get messages and  
8 communications from the Defendants.

9 15. Defendants followed similar unlawful practices, upon information and belief, in  
10 connection with other Employees in a concerted effort to limit and restrict regular and overtime  
11 hours earned by and owing to Plaintiff and the other Class members. Time worked off the clock  
12 also caused Plaintiff and other Class members to work beyond eight hours in a shift. As a result  
13 of the above-described off the clock work, Defendants failed to pay Plaintiff and Class members  
14 overtime for approximately thirty minutes before and at the end of work shifts which  
15 Defendants did not record in any timekeeping or payroll records. Defendants thus both failed to  
16 pay overtime hours and failed to compensate all hours worked at the correct premium rates.

17 16. Plaintiff was therefore not paid for all his hours worked at the required  
18 minimum, overtime and double time wage rates due to Defendants' policy and practice of  
19 requiring him to work off the clock and without pay. With work shifts generally scheduled for  
20 eight hours or more, this unpaid off the clock work resulted in Plaintiff and the Class members  
21 working past eight hours on a shift, which required that they be paid at the correct overtime rate  
22 of 1.5 times their regular rate. Defendants thus systematically underpaid Plaintiff and the Class  
23 members by failing to pay them at the required overtime rates for all hours over eight in a work  
24 shift or over forty in a work week, and all hours over twelve in a day at the required double time  
25 rate. Upon information and belief, the Class members were bound by similar scheduling and  
26 work policies which Defendants required them to follow and endured similar violations at  
27 Defendants' hands as Plaintiff.

28

1           17.     On September 12, 2023, Plaintiff requested his payroll and personnel files from  
2 the Defendants. As of the date of this filing, Defendants have also failed to produce Plaintiff's  
3 entire personnel file despite multiple follow up requests to that end. Defendants have either  
4 failed to maintain timekeeping records for Plaintiff that would permit Plaintiff to discover the  
5 nature and extent of the off the clock work Defendants' required and the actual hours Plaintiff  
6 worked, or have otherwise declined to produce them to Plaintiff in response to a timely and  
7 lawful request. By failing to pay for all hours worked, Defendants have committed knowing and  
8 intentional ongoing violations of the record keeping requirements under the Labor Code §§ 226  
9 and 1174.

10           18.     As a result of the above-described unlawful requirements to work off the clock,  
11 the failure to accurately record all hours worked and the other wage violations they endured at  
12 Defendants' hands, Plaintiff and the Class members were not properly paid all wages earned  
13 and all wages owed to them by Defendants, including when working more than eight hours in  
14 any given day and/or more than forty hours in any given week. As a result of Defendants'  
15 unlawful policies and practices, Plaintiff and Class members incurred overtime hours worked  
16 for which they were not adequately and completely compensated, in addition to the hours they  
17 were required to work off the clock at their regular rates.

18           19.     The failure to pay for all hours worked and underpayment of wages to Plaintiff  
19 and the Class members is and has been a direct consequence of Defendants' unlawful  
20 compensation policies and practices, which upon information and belief applied uniformly to  
21 the Class members working at Defendants' locations and facilities. As a result of the above-  
22 described unlawful requirements to work off the clock, the failure to accurately record all hours  
23 worked and pay wages at the correct rates, the failure to compensate employees for time under  
24 Defendants' control and the other wage violations they endured at Defendants' hands, Plaintiff  
25 and the Class members were not properly paid all wages earned and all wages owed to them by  
26 Defendants, including when working more than eight hours in any given day and/or more than  
27 forty hours in any given week.

1           20.     Therefore, from at least four years prior to the filing of this lawsuit and continuing  
2 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all  
3 hours worked and failing to pay minimum wages for all time worked, as required by California  
4 law. Defendants thus followed a consistent policy or practice of failing to pay Employees  
5 overtime compensation at the correct premium overtime rates for all hours worked in excess of  
6 eight hours a day and/or forty hours a week and double-time rates for all hours worked in excess  
7 of twelve hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC  
8 Wage Orders. To the extent Defendants paid Plaintiff and the Class members bonuses and shift  
9 differentials and other forms of remuneration above and beyond their hourly pay, upon  
10 information and belief Defendants miscalculated and therefore underpaid any overtime they paid  
11 during these pay periods by failing to include all forms of remuneration in the regular rate used  
12 to calculate and pay overtime.

13           21.     Defendants also failed to provide Plaintiff and the Class members with their  
14 required meal periods and the at least two ten-minute rest breaks required for scheduled shifts of  
15 eight hours. Demanding workloads contributed to Defendants' common policy of failing to  
16 provide lawful meal periods to Plaintiff and the Class members, as required under the Labor  
17 Code and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed  
18 to authorize and permit Plaintiff and the employee Class Members to take all required 10-  
19 minute rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage  
20 Order(s).

21           22.     More specifically, Plaintiff worked shifts that entitled him to at least one meal  
22 period, but Defendants' managers required Plaintiff and the Class members to prioritize work  
23 over taking lawful meal periods. To whatever extent there was ever a schedule for meal periods,  
24 it went by the wayside quickly as there always seemed to be a customer that needed assistance.  
25 Constant short-staffing led to systematically late meal periods, and on-duty meal periods that  
26 were incessantly interrupted by patient and management demands and required job duties and  
27 tasks. Moreover, Plaintiff and the Class members were required to wear headsets at all times  
28 including all rest and meal breaks and were required to remain on the premises at Defendants'

1 restaurant locations to be available at any time to work and respond to customer and manager  
2 demands and other work requirements. The heavy workload and management expectations also  
3 contributed to Employees working through meal periods or not taking them or taking them late  
4 so work could be accomplished or they were otherwise required to remain under Defendants'  
5 control during meal periods.

6 23. Therefore, meal period violations systematically occurred throughout all of  
7 Plaintiff's work shifts where Defendants failed to provide a lawful meal period and also failed to  
8 provide a meal premium payment. To the extent Defendants ever did pay Plaintiff a meal period  
9 premium, they failed to include all forms of remuneration beyond hourly wages in the regular  
10 hourly rate used to pay the one-hour premium payment. Upon information and belief, the other  
11 Class members were subjected to similar unlawful policies and practices and endured similar  
12 violations as Plaintiff.

13 24. Defendants thus failed to provide all the legally required unpaid, off-duty meal  
14 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class  
15 members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class  
16 members were required to perform work as ordered by Defendants or otherwise remain under  
17 Defendants' control for more than five hours during a shift, or ten hours in a shift, but were  
18 often required to do so without receiving a lawful, timely, and duty-free 30-minute meal breaks.  
19 Additionally, as addressed above, Defendants followed a practice of requiring off the clock  
20 work, in a manner that would impact when Employees were to receive meal periods and rest  
21 breaks, thus leading to further violations.

22 25. As a result, Defendants' failure to provide Plaintiff and the Class members with  
23 all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest  
24 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants  
25 also failed to pay Employees "premium pay," i.e. one hour of wages at each Employee's  
26 effective hourly rate of pay, for each meal period or rest break that Defendants failed to provide  
27 or deficiently provided. Upon information and belief, if and when Defendants did pay any meal  
28 period premiums, they failed to include all forms of remuneration in the regular rate used to

1 calculate and pay it. To the extent Plaintiff and the Class members worked shifts of over ten  
2 hours, upon information and belief Defendants failed to provide them with a second required  
3 meal period.

4         26.       Therefore, for at least four years prior to the filing of this action and through to  
5 the present, Plaintiff and the Class members were unable to take off-duty breaks or were  
6 otherwise not provided with the opportunity to take required meal breaks due to Defendants'  
7 policies and practices. On the occasions when Plaintiff and the Class members were provided  
8 with a meal period, it was often untimely or interrupted, or was impermissibly shortened, and  
9 Employees were not provided with one hour's wages in lieu thereof. Meal period violations thus  
10 occurred in one or more of the following manners:

- 11               (a)       Class members were not provided full thirty-minute duty free meal  
12                       periods for work days in excess of five hours and were not compensated  
13                       one hour's wages in lieu thereof, all in violation of, among others, Labor  
14                       Code §§ 226.7, 512, and the applicable Industrial Welfare Commission  
15                       Wage Order(s);
- 16               (b)       Class members were not provided second full thirty-minute duty free  
17                       meal periods for work days in excess of ten hours;
- 18               (c)       Class members were required to work through at least part of their daily  
19                       meal period(s);
- 20               (d)       Meal periods were provided after five hours of continuous work during a  
21                       shift; and
- 22               (e)       Class members were restricted in their ability to take a full thirty-minute  
23                       meal period and were not permitted to leave their work premises during  
24                       meal periods and were otherwise required to remain under Defendants'  
25                       control during meal periods.

26         27.       Defendants also failed to authorize and permit Plaintiff and the Class members to  
27 take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction  
28 thereof. There were similar issues with the required net ten-minute rest breaks that Plaintiff and

1 the Class members were unable to take as with meal periods. Defendants made no efforts or  
2 provided no emphasis on authorizing and permitting Employees to take net ten-minute rest  
3 breaks for every four hours of work.

4 28. Given the constant and ongoing job demands he faced and Defendants' failure to  
5 adequately staff its facilities to permit employees to take breaks, Plaintiff was compelled to  
6 remain on the premises performing job-related duties while also remaining under Defendants'  
7 control during times when he was supposed to be enjoying a duty-free rest break. By uniformly  
8 requiring Plaintiff and the other similarly situated co-workers to remain under Defendants'  
9 control and on premises during rest breaks, Defendants committed systematic and ongoing rest  
10 break violations. To the extent Defendants paid any rest break premium payments under Labor  
11 Code § 226.7 to Plaintiff or Class members these payments failed to include all forms of  
12 remuneration, including shift differentials and bonuses and premium payments to Plaintiff, at  
13 the regular hourly rate at which they paid the rest break premiums.

14 29. Defendants' management did not emphasize the requirement to provide at least  
15 one ten-minute duty-free rest period for each four-hour duty period, or major fraction thereof. If  
16 and when Plaintiff was permitted to take a ten-minute rest break on a shift, he was not permitted  
17 to take a second one or a third one or any breaks were untimely or impermissibly shortened.  
18 Further violations occurred as Plaintiff and the Class members were required to remain under  
19 Defendants' control by not being able to leave the premises and by Defendants' requirement  
20 that they remain ready to respond to work requirements and job and customer demands.

21 30. Therefore, Defendants failed to authorize and permit Class members to take all  
22 their required rest breaks. Plaintiff and the other similarly situated Class members were either  
23 not authorized permitted the opportunity to take a rest break, or were required to remain under  
24 Defendants' control and respond to instructions and job demands. Defendants also failed to  
25 authorize and permit Employees to leave the property premises during rest breaks, or else  
26 prevented them from doing so, thus further evidencing Defendants' policy and practice of  
27 requiring Plaintiff and the Class members to remain under their control during required off-duty  
28 rest breaks.

1           31. Defendants' policies and practices thus systematically deny and denied Plaintiff  
2 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal  
3 periods. The California Supreme Court has instructed that the rest period requirement obligates  
4 employers to permit and authorize employees to take-off-duty rest periods. That is, during rest  
5 periods employers must relieve employees of all duties and relinquish control over how  
6 employees spend their time. Plaintiff and the Class members were and are under Defendants'  
7 control when they are working through rest breaks, and Defendants failed to schedule or  
8 account for required first, second, and third rest breaks during the shifts Plaintiff and the Class  
9 members generally worked.

10           32. Plaintiff and the Employees in the Class were not authorized and permitted to  
11 take lawful rest periods, were systematically required by Defendants to work through or during  
12 breaks, and were not provided with one hour's wages in lieu thereof. They were required to  
13 remain on duty during breaks or portions of their breaks, thus making them either untimely or  
14 shortened and on-duty, and they were also prevented from leaving the premises during rest  
15 breaks under Defendants' policies and practices. Rest period violations therefore arose in one or  
16 more of the following manners:

- 17           (a) Class members were required to work without being provided a minimum  
18 ten minute rest period for every four hours or major fraction thereof worked  
19 and were not compensated one hour of pay at their regular rate of  
20 compensation for each workday that a rest period was not provided, and to  
21 the extent Defendants paid any premiums, they failed to include all forms  
22 of remuneration in the regular rate used to calculate and pay them.
- 23           (b) Class members were not authorized and permitted to take timely rest  
24 periods for every four hours worked, or major fraction thereof; and
- 25           (c) Class members were required to remain on duty and under Defendants'  
26 control during rest periods or otherwise had their rest periods interrupted  
27 by work demands.
- 28

1           33.     From at least four years prior to the filing of this lawsuit and continuing to the  
2 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting  
3 or deducting the Employees' earned wages, including by requiring off the clock work during  
4 breaks and before and after work shifts and by miscalculating the regular rate and accordingly  
5 underpaying overtime wages and meal and rest break premiums. By not compensating  
6 Employees for all hours worked and under Defendants' control at the correct rates, Defendants  
7 unlawfully deducted wages earned by and owed to Plaintiff and the Class members, in violation  
8 of Labor Code § 221.

9           34.     Defendants also violated California Labor Code § 246 by not providing all  
10 required paid sick days to Plaintiff and the similarly aggrieved Employees. Labor Code § 246  
11 provides that an Employee who "works in California for the same employer for 30 or more days  
12 within a year from the commencement of employment is entitled to paid sick days as specified  
13 in this section." Paid sick time for nonexempt employees shall be calculated in the same manner  
14 as the regular pay rate for the workweek in which the employee uses the paid sick time.  
15 Defendants failed to provide Plaintiff and the other similarly Aggrieved Employees with all  
16 their required and earned sick days paid at the correct rate of pay, in violation of Labor Code §  
17 246. Additionally and upon information and belief, Defendants have failed to provide COVID-  
18 19 supplemental sick leave to the Class members during the relevant time period, including by  
19 failing to provide two work weeks of COVID-19 supplemental paid sick leave paid at the  
20 correct rates as required under Labor Code §§ 248.1 and 248.2 and including damages and  
21 penalties as these sections are enforced through Labor Code § 248.5, which requires that: "If  
22 paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the  
23 employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater,  
24 but not to exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in  
25 the administrative penalty." Plaintiff accordingly seek this relief available for Defendants'  
26 failure to provide Employees with all their required and earned sick days and all their COVID-  
27 19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and  
28 statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558,

1 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to  
2 Labor Code § 2699(g)(1).

3 35. Upon information and belief, Defendants also failed to provide Employees such  
4 as Plaintiff at the time of his employment and thereafter with written notice complying with all  
5 the requirements of Labor Code § 2810.5, which provides that: "At the time of hiring, an  
6 employer shall provide to each employee a written notice, in the language the employer  
7 normally uses to communicate employment-related information to the employee, containing"  
8 specifically required information. Upon information and belief, Defendants failed to provide  
9 this information to the Class Members as required under Labor Code § 2810.5. Defendants were  
10 required to provide Plaintiff and the Class members certain specific information upon hiring  
11 pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiff with any  
12 such information when he was hired, or have failed to produce it, and upon information and  
13 belief, Defendants committed similar violations in connection with similarly situated Class  
14 members.

15 36. As a result of these illegal policies and practices, Defendants also engaged in and  
16 enforced the following additional unlawful practices and policies against Plaintiff and the Class  
17 members he seeks to represent:

- 18 (a) failing to pay all wages owed to Class members who either were  
19 discharged, laid off, or resigned in accordance with the requirements of  
20 Labor Code §§ 201, 202, 203 and 227.3;
- 21 (b) failing to pay all wages owed to the Class members twice monthly in  
22 accordance with the requirements of Labor Code § 204;
- 23 (c) failing to pay Class members all wages owed, including all meal and rest  
24 period premium wages, and failing to pay them at the regular rate of  
25 compensation;
- 26 (d) failing to maintain accurate records of Class members' hours worked and  
27 earned wages and meal periods in violation of Labor Code §§ 226 and  
28 1174(d) and section 7 of the applicable IWC Wage Orders; and

1 (e) failing to produce timekeeping records in response to Plaintiff's timely and  
2 lawful request to receive them under these authorities.

3 37. Defendants have also consistently failed to provide Class members with timely,  
4 accurate, and itemized wage statements, in writing, as required by California wage-and-hour  
5 laws, including by the above-described requirement of off the clock work, failure to pay all  
6 overtime and double time wages owed and failure to pay them at the appropriate premium rates,  
7 and failure to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or  
8 by miscalculating any overtime or meal period or rest break premium wages and by the  
9 systematic and unlawful deductions Defendants took from Employee wages. Defendants have  
10 also made it difficult to account with precision for the unlawfully withheld wages and meal and  
11 rest period compensation owed to Plaintiff and the Class, during the liability period, including  
12 because they did not calculate the regular rate of pay correctly when paying overtime or meal  
13 period premiums and because they did not implement and preserve a record-keeping method as  
14 required for non-exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7  
15 of the applicable California Wage Orders. Upon information and belief, time clock punches were  
16 not maintained or were not accurately maintained for work shifts and meal periods. Defendants  
17 also failed to accurately record and pay for all regular and overtime hours worked and submitted  
18 by Plaintiff and the Class members, including by failing to pay all overtime hours at the correctly  
19 calculated overtime premium rate.

20 38. Defendants have also failed to comply with Labor Code § 226(a)(8) by  
21 inaccurately listing the name and address of the legal entity that is the employer. On information  
22 and belief, Defendants have listed CASTANEDAS-INDIO on wage statements issued to Plaintiff  
23 and Class members. Plaintiff is uncertain about the organizational form of this entity which was  
24 not found on the California Secretary of State website. On information and belief, Defendants  
25 have also listed AM CASTANEDA, INCORPORATED – INDO CASTANEDA'S MEXICAN  
26 FOOD on wage statements. Plaintiff is uncertain about the organizational form of this entity  
27 which is not listed on the California Secretary of State website as being authorized to conduct  
28 business in California. Defendants' failure to accurately name the legal entity employing

1 Plaintiff and Class members on wage statements issued to them has caused confusion over the  
2 entity responsible for addressing the Labor Code violations alleged by Plaintiff, including those  
3 under section 226(a)(8).

4 39. Defendants also provided Plaintiff and the Class members with wage statements  
5 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.  
6 For the same reasons as explained above, Plaintiff and the Class members were provided with  
7 unlawful wage statements that failed to reflect all hours worked and failed to pay for all overtime  
8 hours or failed to pay overtime wages at the correct overtime premium rate, and Defendants  
9 miscalculated meal and rest break premiums, and sick time if and when they did pay them.  
10 Defendants followed this unlawful policy and practice even though both Plaintiff and Defendants  
11 were aware that Plaintiff and the Class members worked more total hours than were reflected on  
12 the wage statements, including overtime hours, and were underpaid by regular rate  
13 miscalculation. Plaintiff and the Employees in the Class were unable to discern from their wage  
14 statements alone the actual hours they worked in total during a pay period and the rates they  
15 were paid for those hours worked.

16 40. Defendants have thus also failed to comply with Labor Code § 226(a) by  
17 inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class  
18 members, along with the appropriate applicable rates, among others requirements. Plaintiff and  
19 Class members are therefore entitled to penalties not to exceed \$4,000.00 for each employee  
20 pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the  
21 applicable California IWC Wage Orders by failing to maintain time records showing when the  
22 employee begins and ends each work period, meal periods, and wages earned pursuant to Labor  
23 Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from  
24 payment of wages and accurately reporting total hours worked.

25 41. Defendants also required Plaintiff and the Class members to work hours off the  
26 clock for which they were not compensated. They were also required to endure off the clock  
27 work addressed above during interrupted or otherwise on-duty meal and rest periods and were  
28 not provided with sick pay and supplemental sick leave and were subjected to systematic off the

1 clock work. Defendants also failed to pay all overtime premium wages owed for work conducted  
2 on a work shift and a workday or failed to pay it at the correct rate, as addressed above.  
3 Therefore, Defendants have also followed a uniform and consistent policy of failing to pay all  
4 wages owed to Plaintiff and other similarly situated Employees at the time of their termination or  
5 within seventy-two hours of their resignation, as required by California wage-and-hour laws,  
6 including under Labor Code § 203.

7 42. From at least four years prior to the filing of this lawsuit and continuing to the  
8 present, Defendants have regularly required Plaintiff and the Class members to incur necessary  
9 business expenses in the course of performing their required job duties without reimbursement.  
10 These included the cell phone-related expenses Plaintiff incurred in responding to calls from  
11 management on his personal phone, office equipment, such as a stapler, to be able to perform his  
12 job, and uniform maintenance expenses. Plaintiff and the Class members must be reimbursed for  
13 these necessary business expenses under Labor Code § 2802, and Defendants systematically  
14 failed to do so.

15 43. In light of the foregoing, Plaintiff and the Employees in the Class bring this action  
16 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,  
17 226.7, 227.3, 246, 248.1, 248.2, 248.5, 351, 354, 510, 511, 512, 558, 558.1, 1174, 1174.5,  
18 1182.12, 1185, 1194, 1194.2 1197, 1198, 1198.5, 1199, 2802, 2810.5, 2698 *et. seq.*, and  
19 California Code of Regulations, Title 8, section 11000 *et seq.*

20 44. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,  
21 Plaintiff and the Class members seek injunctive relief, restitution, and disgorgement of all  
22 benefits Defendants have enjoyed from their violations of Labor Code and the other unfair,  
23 unlawful, or fraudulent practices alleged in this Complaint.

#### 24 **CLASS ALLEGATIONS**

25 45. Plaintiff brings this class action on behalf of himself and all others similarly  
26 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the  
27 Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any  
28 time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as

determined by the Court (“the Class Period”), and who have been employed as non-exempt, hourly employees within the State of California.” This includes all types of Employees providing restaurant services to Defendants’ customers at their California restaurant locations. Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Meal Period Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

d. Subclass 4. Rest Break Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Employee’s regular rate of pay in lieu thereof.

e. Subclass 5. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members who were subject to Defendants’ policy and/or practice of deducting wages earned from their pay, including by requiring off the clock work.

g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class members who were subject to Defendants’ policy and practice of not timely paying all wages earned when they were due and payable at least twice monthly.

h. Subclass 8. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants’ policy and/or practice of failing to timely pay wages upon termination.

i. Subclass 9. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

j. Subclass 10. Expense Reimbursement Subclass. All Class members who incurred necessary business expenses in the course of performing their job duties and were not reimbursed for them.

k. Subclass 11. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

46. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or to provide further division into subclasses or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class against Defendants, the Class Period should be adjusted accordingly.

47. Defendants, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby Defendants failed to correctly calculate and pay compensation for the time worked by Plaintiff and the other members of the Class, even though Defendants enjoyed the benefit of this work, required Employees to perform this work and permitted or suffered to permit this work. Defendants have uniformly denied these Class members wages to which these employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in order to unfairly cheat the competition and unlawfully profit.

48. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in this litigation and the proposed Class is easily ascertainable from the employment records for Plaintiff and the Class members that Defendants are required to maintain under California law.

1           **A.       Numerosity**

2           49.     The potential members of the Class as defined are so numerous that joinder of all  
3 the Class members is impracticable. While the precise number of Class member has not been  
4 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the  
5 time period relevant to this lawsuit employed, at least hundreds of Employees who satisfy the  
6 Class definition within the State of California. Plaintiff alleges that Defendants' employment  
7 records will provide information as to the number and location of all Class members.

8           **B.       Commonality**

9           50.     There are questions of law and fact common to the Class that predominate over  
10 any questions affecting only individual Class members. The common questions are numerous  
11 and substantial and flow from Defendants' uniform policies and/or practices of violating the  
12 California Labor Code addressed above. As such, these common questions predominate over  
13 individual questions concerning each individual Class Member's showing as to his or her  
14 eligibility for recovery or as to the amount of damages. These common questions of law and fact  
15 include:

- 16           a.     Whether Defendants failed to pay Employees minimum wages;  
17           b.     Whether Defendants failed to pay Employees wages for all hours worked;  
18           c.     Whether Defendants failed to pay Employees overtime as required under Labor  
19                 Code § 510;  
20           d.     Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable  
21                 IWC Wage Orders, by failing to provide Employees with requisite meal periods  
22                 or premium pay in lieu thereof;  
23           e.     Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC  
24                 Wage Orders, by failing to authorize and permit Employees to take requisite rest  
25                 breaks or provide premium pay in lieu thereof;  
26           f.     Whether Defendants violated Labor Code § 226(a) by providing Employees with  
27                 inaccurate wage statements and wage statements that omitted many of the Section  
28                 226(a) requirements.

- 1 g. Whether Defendants violated Labor Code § 221;
- 2 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
- 3 wages and compensation due and owing at the time of termination of
- 4 employment;
- 5 i. Whether Defendants' conduct was willful;
- 6 j. Whether Defendants violated Labor Code § 226 and § 1174 and §1198 and the
- 7 IWC Wage Orders by failing to maintain accurate records of Class members'
- 8 earned wages and work periods;
- 9 k. Whether Defendants violated Labor Code § 1194 by failing to compensate all
- 10 Employees during the relevant time period for all hours worked, whether regular
- 11 or overtime;
- 12 l. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
- 13 wages earned at least twice monthly;
- 14 m. Whether Defendants violated Labor Code § 2802 by failing to reimburse
- 15 necessary business expenses incurred by Employees;
- 16 n. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not
- 17 providing employees with all required sick days and COVID-19 supplemental
- 18 sick leave;
- 19 o. Whether Defendants violated Labor Code § 227.3 by failing to pay Employees
- 20 vested vacation time at the time of their separation from Defendants'
- 21 employment.
- 22 p. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 23 q. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 24 r. Whether Employees are entitled to equitable relief pursuant to Business and
- 25 Professions Code § 17200 *et seq.*

26 **C. Typicality**

27 51. The claims of the named Plaintiff are typical of those of the other Employees. The

28 Employee Class members all sustained injuries and damages arising out of and caused by

Defendants' common course of conduct and uniformly applied policies in violation of statutes, as well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for the off the clock work and meal and rest violations they were required to endure are typical of those of the other Class members.

**D. Adequacy of Representation**

52. Plaintiff will fairly and adequately represent and protect the interest of the Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are experienced and competent in litigating employment class actions.

**E. Superiority of Class Action**

53. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee in the Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

54. As to the issues raised in this case, a class action is superior to all other methods for the fair and efficient adjudication of this controversy, as joinder of all Class members is impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class members. Further, as the economic or other loss suffered by vast numbers of Class members may be relatively small, the expense and burden of individual actions makes it difficult for the Class members to individually redress the wrongs they have suffered. Moreover, in the event disgorgement is ordered, a class action is the only mechanism that will permit the employment of a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in managing this case as a class action, and proceeding on a class-wide basis will permit Employees to vindicate their rights for violations they endured which they would otherwise be foreclosed from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

55. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

1 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.  
2 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would  
3 set forth the subject and nature of the instant action. The Defendants' own business records can  
4 be utilized for assistance in the preparation and issuance of the contemplated notices. To the  
5 extent that any further notice is required additional media and/or mailings can be used.

6 56. Defendants, as prospective and actual employers of the Employees in the Class,  
7 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding  
8 Defendants' pay practices, policies and working conditions imposed upon the similarly situated  
9 Employees as well as the effect of any alleged arbitration agreements that may have been forced  
10 upon them. In addition, Defendants knew they possessed special knowledge about pay practices  
11 and policies, most notably intentionally refusing to pay for all hours actually worked which  
12 should have been recorded in Defendants' pay records and the consequence of the alleged  
13 arbitration agreements and policies and practices on the Employees and Class as a whole.

14 57. Plaintiff and the Employees in the Class did not discover the fact that they were  
15 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was  
16 there any discussion about Plaintiff's and the Class members' waiver of their Constitutional  
17 rights of trial by jury, to collectively organize and oppose unlawful pay practices under  
18 California law as well as obtain injunctive relief preventing such practices from continuing. As a  
19 result, the applicable statutes of limitation tolled until such time as Plaintiff and the Class  
20 members discovered their claims.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM WAGES**

23 **(Against All Defendants)**

24 58. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth  
25 in full herein.

26 59. Defendants failed to pay Employees minimum wages for all hours worked.  
27 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees  
28 would work hours and not receive wages, including as alleged above in connection with off the

1 clock work, including all the time required to remain on duty and under Defendants' control  
2 during breaks and due to the work demands placed upon them by Defendants' management and  
3 patients and by paying what should have been overtime hours as regular hours. Defendants'  
4 uniformly applied policies required systematic off the clock work and underpayment of all wages  
5 owed to Employees over a period of time, while benefiting Defendants. During the relevant time  
6 period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class  
7 members, including by requiring systematic off the clock work. To the extent any local wage  
8 ordinances were also applicable to paying the employees an hourly rate above the minimum wage  
9 rate, Defendants failed to comply with the local wage ordinances. Defendants' uniform pattern of  
10 unlawful wage and hour practices manifested, without limitation, applicable to the Class as a  
11 whole, as a result of implementing a uniform policy and practice that denied accurate  
12 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

13         60. In California, employees must be paid at least the applicable state minimum wage  
14 for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and  
15 paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Also, pursuant to  
16 California Labor Code § 204, other applicable laws and regulations, and public policy, an  
17 employer must timely pay its employees for all hours worked. Defendants failed to do so.

18         61. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"  
19 states: "The minimum wage for employees fixed by the commission is the minimum wage to be  
20 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The  
21 applicable minimum wage rate fixed by the commission for work during the relevant period is  
22 found in the Wage Orders.

23         62. The minimum wage provisions of California Labor Code are enforceable by  
24 private civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any  
25 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage  
26 or the legal overtime compensation applicable to the employee is entitled to recover in a civil  
27 action the unpaid balance of the full amount of this minimum wage or overtime compensation,  
28 including interest thereon, reasonable attorney's fees and costs of suit."

1           63.     As described in California Labor Code §§ 1185 and 1194.2, any action for wages  
2 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,  
3 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage  
4 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage  
5 for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum  
6 rate in the absence of a contractually agreed upon one.

7           64.     In committing these violations of the California Labor Code, Defendants  
8 inaccurately recorded, or required Plaintiff and the Class members to input times that did not  
9 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the  
10 actual time worked by Plaintiff and other members of the Class, including by requiring off the  
11 clock work as addressed in detail above. Defendants acted in an illegal attempt to avoid the  
12 payment of all earned wages, and other benefits in violation of the California Labor Code, the  
13 Industrial Welfare Commission requirements and other applicable laws and regulations. As a  
14 result of these violations, Defendants also failed to timely pay all wages earned in accordance  
15 with California Labor Code § 1194.

16           65.     California Labor Code § 1194.2 also provides for the following remedies: “In any  
17 action under Section 1194 . . . to recover wages because of the payment of a wage less than the  
18 minimum wages fixed by an order of the commission, an employee shall be entitled to recover  
19 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

20           66.     In addition to restitution for all unpaid wages, pursuant to California Labor Code  
21 § 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial  
22 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to  
23 pay each employee minimum wages.

24           67.     Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are  
25 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid  
26 and interest thereon.

27           68.     Defendants have the ability to pay minimum wages for all time worked and have  
28 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this

1 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

2           69. Plaintiff and the Class members are entitled to recover the unpaid minimum  
3 wages (including double minimum wages) and local wage ordinance wages and liquidated  
4 damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and  
5 reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a).  
6 Plaintiff and the other members of the Class further request recovery of all unpaid wages,  
7 according to proof, interest, statutory costs, as well as the assessment of any statutory penalties  
8 against Defendants, in a sum as provided by the California Labor Code and/or other applicable  
9 statutes. To the extent minimum wage compensation is determined to be owed to the Class  
10 members who have terminated their employment, Defendants' conduct also violates Labor Code  
11 §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties  
12 under California Labor Code § 203, which penalties are sought herein on behalf of these Class  
13 members. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and  
14 resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate  
15 wage statements. Defendants' conduct as alleged herein was willful, intentional, and not in good  
16 faith. Further, Plaintiff and other Class members are entitled to seek and recover statutory costs.

17                                   **SECOND CAUSE OF ACTION**

18                   **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

19                                   **(Against All Defendants)**

20           70. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth  
21 in full herein.

22           71. California Labor Code § 1194 provides that "any employee receiving less than the  
23 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to  
24 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime  
25 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The  
26 action may be maintained directly against the employer in an employee's name without first  
27 filing a claim with the Division of Labor Standards and Enforcement.  
28

1           72. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and  
2 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the  
3 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular  
4 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)  
5 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any  
6 one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12)  
7 hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of  
8 work in a workweek.

9           73. Defendants had a consistent policy of not paying Employees wages for all hours  
10 worked, including by requiring off the clock work as addressed above, by unlawful deductions,  
11 by under-reporting actual hours worked, and by requiring Employees to do so as well.  
12 Defendants have also failed to include all forms of remuneration in the regular rate of pay used  
13 to calculate and pay overtime, and failed to begin paying overtime when it was incurred due to  
14 the off the clock work, as detailed above.

15           74. Defendants thus had a consistent policy of not paying Employees wages for all  
16 hours worked, including hours at their required regular, overtime, and double-time rates.  
17 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted  
18 and/or modified certain employees' hours, including Plaintiff's, or required Plaintiff and the  
19 Class members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff  
20 and the Class members all earned and owed straight time and overtime wages and other benefits,  
21 in violation of the California Labor Code, the California Code of Regulations and the IWC Wage  
22 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants  
23 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt  
24 employees to work through meal periods or remain under Defendants' control when they were  
25 required to be clocked out or to otherwise work off the clock to complete their daily job duties  
26 and respond to demands from customers and managers.

27           75. Therefore, Employees were not properly compensated, nor were they paid  
28 overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours in a

1 given week. Based on information and belief, Defendants did not make available to Employees a  
2 reasonable protocol for correcting time records when Employees worked overtime hours or to fix  
3 incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's  
4 detriment. Defendants have also violated these provisions by requiring Plaintiff and other  
5 similarly situated Class members to work through meal periods when they were required to be  
6 clocked out or to otherwise work off the clock to complete their daily job duties.

7         76. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of  
8 regular wages owed and overtime compensation for all hours worked, as required by California  
9 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the  
10 applicable IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly  
11 calculate the regular rate used to calculate and pay overtime, and meal and rest premiums, as  
12 addressed above.

13         77. Additionally, Labor Code § 558(a) provides "any employer or other person  
14 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter  
15 or any provisions regulating hours and days of work in any order of the IWC shall be subject to  
16 a civil penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee  
17 for each pay period for which the employee was underpaid in addition to an amount sufficient  
18 to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for  
19 each underpaid employee for each pay period for which the employee was underpaid in  
20 addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to  
21 this section shall be paid to the affected employee." Labor Code § 558(c) states, "the civil  
22 penalties provided for in this section are in addition to any other civil or criminal penalty  
23 provided by law." Defendants have violated provisions of the Labor Code regulating hours and  
24 days of work as well as the IWC Wage Orders. Accordingly, Plaintiff and the Class members  
25 seek the remedies set forth in Labor Code § 558.

26         78. Defendants' failure to pay compensation in a timely fashion also constituted a  
27 violation of California Labor Code § 204, which requires that all wages shall be paid  
28 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct

1 violation of that provision of the California Labor Code, Defendants have failed to pay all  
2 wages and overtime compensation earned by Employees. Each such failure to make a timely  
3 payment of compensation to Employees constitutes a separate violation of California Labor  
4 Code § 204.

5 79. Employees have been damaged by these violations of California Labor Code §§  
6 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally,  
7 under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not  
8 less than \$100 for causing Employees “to work for longer hours than those fixed, or under  
9 conditions of labor prohibited by an order of the commission” or if the employer pays “a wage  
10 less than the minimum fixed by an order of the commission” or “violates...any provision of this  
11 chapter or any order or ruling of the commission.”

12 80. Consequently, pursuant to the California Labor Code, including Labor Code §§  
13 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders,  
14 including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the  
15 full amount of all their unpaid wages and overtime compensation for all their hours worked,  
16 with interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any  
17 statutory penalties against Defendants, and each of them, and any additional sums as provided  
18 by the Labor Code and/or other statutes.

19 **THIRD CAUSE OF ACTION**

20 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

21 **(Against All Defendants)**

22 81. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth  
23 in full herein.

24 82. Employees regularly worked shifts greater than five (5) hours and in some  
25 instances, greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the  
26 applicable IWC Wage Order, an employer may not employ someone for a shift of more than five  
27 (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or  
28 for a shift of more than ten (10) hours without providing him or her with a second meal period of

1 not less than thirty (30) minutes.

2 83. Defendants failed to provide Employees with meal periods as required under the  
3 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often  
4 required to work or to otherwise remain under Defendants' control during meal periods, or  
5 Defendants provided them after Employees worked beyond the fifth hour of their shifts or  
6 Employees otherwise had them shortened and interrupted by work demands and requirements to  
7 perform off the clock work and remain under Defendants' control. Furthermore, upon  
8 information and belief, on the occasions when Employees worked more than ten hours in a given  
9 shift, they did so without receiving a second uninterrupted thirty-minute meal period as required  
10 by law.

11 84. Defendants thus failed to provide Plaintiff and the Class members with meal  
12 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,  
13 including by not providing them with the opportunity to take meal breaks, by providing them late  
14 or for less than thirty minutes, or by requiring them to perform work during breaks.

15 85. Moreover, Defendants failed to compensate Employees for each meal period not  
16 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and  
17 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an  
18 employee a meal period in accordance with this section, the employer shall pay the employee  
19 one (1) hour of pay at the employee's regular rate of compensation for each workday that the  
20 meal period is not provided. As detailed above, when Defendants paid any meal period  
21 premiums, they upon information and belief underpaid them by miscalculating the regular rate of  
22 compensation by not including all forms of remuneration in it. Defendants thus failed to  
23 compensate the Employees in the Class for each meal period not provided or inadequately  
24 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC  
25 Wage Order.

26 86. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the  
27 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal  
28 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided

1 or deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory  
2 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and  
3 other statutes and applicable IWC Wage Order paragraphs.

4 **FOURTH CAUSE OF ACTION**

5 **REST BREAK LIABILITY UNDER LABOR CODE § 226.7**

6 **(Against All Defendants)**

7 87. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth  
8 in full herein.

9 88. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders  
10 provide that employers must authorize and permit all employees to take rest periods at the rate of  
11 ten minutes net rest time per four (4) work hours.

12 89. Employees consistently worked consecutive four hour shifts and were generally  
13 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and  
14 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable  
15 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for  
16 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest  
17 breaks of not less than ten minutes for each consecutive four hour shift. Defendants made no  
18 effort to authorize and permit Plaintiff and the Class members to take lawful rest breaks.  
19 Employees were often required to work or to otherwise remain under Defendants' control during  
20 rest periods, including by responding to work requirements, and had breaks provided untimely as  
21 a result of the above described off the clock work.

22 90. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage  
23 Orders provide that if an employer fails to provide an employee rest period in accordance with  
24 this section, the employer shall pay the employee one hour of pay at the employee's regular rate  
25 of compensation for each workday the rest period is not provided. Defendants failed to do so.

26 91. Defendants, and each of them, have therefore intentionally and improperly denied  
27 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and  
28 paragraph 12 of the applicable IWC Wage Orders.

92. Defendants failed to authorize and permit Plaintiff and the Class members to take rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders. To the extent Defendants paid any rest break premiums, they upon information and belief, underpaid them by miscalculating the regular rate of compensation by not including all forms of remuneration in it. Defendants thus failed to compensate the Employees in the Class for each rest period not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order.

93. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour of wages at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

**FIFTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE § 226(a)**  
**(Against All Defendants)**

94. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

95. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

1           96. Defendants failed to provide Plaintiff and the similarly situated Employee Class  
2 members with accurate itemized wage statements in writing, as required by the Labor Code and  
3 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to  
4 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,  
5 including for all overtime and double time hours worked and for deficient meal periods and rest  
6 breaks, all of which Defendants knew or reasonably should have known were owed to the  
7 Employees, as alleged above.

8           97. Throughout the liability period, Defendants intentionally failed to furnish to  
9 Plaintiff and the Class members, upon each payment of wages, itemized statements accurately  
10 showing: (1) gross wages earned, (2) total hours worked by the employee, (4) all deductions, (5)  
11 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the  
12 name of the employee and only the last four digits of his or her social security number or an  
13 employee identification number other than a social security number, (8) the name and address of  
14 the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay  
15 period and the corresponding number of hours worked at each hourly rate by the employee  
16 pursuant to Labor Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst  
17 other statutory requirements. Defendants knowingly and intentionally failed to provide Plaintiff  
18 and the Class members with such timely and accurate wage and hour statements.

19           98. Plaintiff and the Class members suffered injury as a result of Defendants'  
20 knowing and intentional failure to provide them with the wage and hour statements as required  
21 by law and are presumed to have suffered injury and entitled to penalties under Labor Code §  
22 226(e), as the Defendants have failed to provide an accurate wage statement, failed to provide  
23 accurate and complete information as required by any one or more of items Labor Code § 226  
24 (a)(1) to (9), inclusive, and the Plaintiff and Class members cannot promptly and easily  
25 determine from the wage statement alone one or more of the following: (i) The amount of the  
26 gross wages or net wages paid to the employee during the pay period or any of the other  
27 information required to be provided on the itemized wage statement pursuant to items (2) to (4),  
28 inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the employer made from gross

1 wages to determine the net wages paid to the employee during the pay period, (iii) The name  
2 and address of the employer and, (iv) The name of the employee and only the last four digits of  
3 his or her social security number or an employee identification number other than a social  
4 security number. For purposes of Labor Code § 226(e) “promptly and easily determine” means  
5 a reasonable person [i.e. an objective standard] would be able to readily ascertain the  
6 information without reference to other documents or information.

7 99. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders,  
8 employers are required “to pay each employee, on the established payday for the period  
9 involved, not less than the applicable minimum wage for all hours worked in the payroll period,  
10 ...” Under Labor Code § 1198, “[t]he employment of any employee for longer hours than those  
11 fixed by the order or under conditions of labor prohibited by the order is unlawful.” Plaintiff and  
12 the Class members may therefore pursue damages and penalties for violations of Labor Code §  
13 204 and paragraph 4(B) and paragraph 20 of the applicable IWC Wage Orders.

14 100. Therefore, as a direct and proximate cause of Defendants’ violation of Labor  
15 Code § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the  
16 Employees in the Class suffered injuries, including among other things confusion over whether  
17 they received all wages owed them, the difficulty and expense involved in reconstructing pay  
18 records, and forcing them to make mathematical computations to analyze whether the wages paid  
19 in fact compensated them correctly for all hours worked.

20 101. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable  
21 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater  
22 of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs  
23 and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an  
24 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled  
25 to an award of costs and reasonable attorneys’ fees.

26 ///

27 ///

28 ///

**SIXTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE § 221**  
**(Against All Defendants)**

102. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

103. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Pursuant to California Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

104. Defendants unlawfully received and/or collected wages from the Employees in the Class by requiring off the clock work, by miscalculating overtime, and by not paying one hour of pay at the regular rate of compensation for every meal and rest period violation endured by Plaintiff and the other Class members, as alleged above. By not compensating Employees for all hours worked and meal and rest period premiums, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

105. As a direct and proximate cause of the unauthorized deductions, Employees have been damaged, in an amount to be determined at trial.

**SEVENTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE § 204**  
**(Against All Defendants)**

106. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

107. Labor Code § 204 instructs that: “All wages, ...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last

1 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the  
2 following month.” Additionally, the requirements of this section shall be deemed satisfied by the  
3 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more  
4 than seven calendar days following the close of the payroll period.” As detailed above,  
5 Defendants maintained a consistently applied policy and practice of not paying all wages earned  
6 between the 1<sup>st</sup> and 15<sup>th</sup> days of a month between the 16<sup>th</sup> and 26<sup>th</sup> day and failed to pay all  
7 wages earned between the 16<sup>th</sup> and the last day of the month between the 1<sup>st</sup> and 10<sup>th</sup> day of the  
8 following month. Defendants similarly failed to pay all wages earned by not more than seven  
9 calendar days following the close of the payroll period.

10 108. All wages due and owing to Plaintiff and the Class members, including as  
11 required under Labor Code § 510, were therefore not timely paid by Defendants. Additionally,  
12 wages required by Labor Code § 1194 and other sections became due and payable to each  
13 employee in each pay period that he or he was not provided with a meal period or rest period or  
14 paid straight or overtime wages to which he or he was entitled.

15 109. Defendants violated Labor Code § 204 by systematically refusing to timely pay  
16 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the  
17 applicable IWC Wage Orders, employers are required “to pay each employee, on the established  
18 payday for the period involved, not less than the applicable minimum wage for all hours worked  
19 in the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for  
20 longer hours than those fixed by the order or under conditions of labor prohibited by the order is  
21 unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for  
22 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders,  
23 including penalties under paragraph 20 of the applicable IWC Wage Orders.

24 110. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to  
25 represent have been deprived of wages in amounts to be determined at trial, and they are entitled  
26 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,  
27 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the  
28 applicable IWC Wage Orders.

**EIGHTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE § 203**  
**(Against All Defendants)**

111. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

112. Plaintiff and numerous Class members are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

113. Defendants failed to pay these Employees all wages due and certain at the time of termination or within seventy-two hours of resignation.

114. The wages withheld from these Employees by Defendants remained due and owing for more than thirty days from the date of separation from employment. Additionally, Defendants failed to pay Plaintiff his final check at the time of his termination.

115. Defendants thus failed to pay Plaintiff and the Class members without abatement, all wages as defined by applicable California law. Among other things, these Employees were not paid all regular and overtime wages, including by Defendants failing to pay for all hours worked or requiring off the clock work or by unlawfully under-recording time entries to the detriment of Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

116. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required "to pay each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders. Under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer

1 hours than those fixed, or under conditions of labor prohibited by an order of the commission” or  
2 if the employer pays “a wage less than the minimum fixed by an order of the commission” or  
3 “violates...any provision of this chapter or any order or ruling of the commission.”

4 117. Defendants’ failure to pay wages, as alleged, entitles Plaintiff and these former  
5 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of  
6 the IWC Wage Orders as addressed above, including the requirement that an employee’s wages  
7 shall continue until paid for up to thirty (30) days from the date they were due.

8 **NINTH CAUSE OF ACTION**

9 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS, LABOR CODE §§ 1174, 1174.5**

10 **(Against All Defendants)**

11 118. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth  
12 in full herein.

13 119. California Labor Code § 1174 requires that all employers shall keep accurate time  
14 and wage records for all employees. California Labor Code § 1174.5 further requires that any  
15 employee suffering injury due to a willful violation of the aforementioned obligations may seek  
16 damages, including civil penalties, from the employer.

17 120. During the course of Plaintiff’s and Employees’ employment, Defendants  
18 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members  
19 as required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and  
20 premium pay as discussed above and failing to document and pay for actual hours worked.

21 121. Defendants are also required under Labor Code § 1198 and the applicable Wage  
22 Order to maintain a tracking system that accurately records times during which Employees work.

23 122. Defendants have maintained a common unlawful policy and practice of failing to  
24 accurately record all hours worked and all meal period start and end times.

25 123. Defendants’ failure to pay wages, as alleged above, was willful in that Defendants  
26 knew wages to be due but failed to pay them.

27 124. Accordingly, Defendants are liable for civil penalties pursuant to the California  
28 Labor Code including § 1174.5, for the three years prior to the filing of this Complaint.

1 **TENTH CAUSE OF ACTION**

2 **FAILURE TO PRODUCE REQUESTED RECORDS, LABOR CODE §§ 226 and 1198**

3 **(Against All Defendants)**

4 125. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth  
5 in full herein.

6 126. Pursuant to California Labor Code § 226, current and former employees have the  
7 right to inspect or receive a copy of their records pertaining to their employment, upon  
8 reasonable request to their employer. Under this statute, an employer that receives a request to  
9 inspect or receive a copy of records pertaining to a current or former employee must comply with  
10 the request as soon as practicable, but no later than twenty-one calendar days from the date.

11 127. Pursuant to California Labor Code § 1198.5(a), every current and former  
12 employee, or his or her representative, has the right to inspect and receive a copy of the  
13 personnel records that the employer maintains relating to the employee's performance or to any  
14 grievance concerning the employee. Under this statute, upon written request from a current or  
15 former employee or his or her representative, an employer must make the contents of those  
16 personnel records available for inspection or provide a copy of the personnel records to the  
17 current or former employee, or his or her representative, not later than thirty calendar days from  
18 the date the employer receives the written request, subject to some limited exceptions. Failure to  
19 comply with these requests allows for a civil penalty seven hundred fifty dollars (\$750), pursuant  
20 to Labor Code §§ 1198.5(k) and 226(f).

21 128. Plaintiff sent written requests through his counsel to Defendants for their payroll  
22 records, timecards, and personnel records. However, Plaintiff has not received all of his  
23 requested records as of the date of this Complaint.

24 129. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely  
25 produce the required records requested by Plaintiff.

26 130. On information and belief, Defendants' failure to provide Plaintiff with all of his  
27 requested employment records is not an isolated incident, but was instead consistent with  
28 Defendants' policy and practice that applied to Plaintiff and Employees.

131. Pursuant to California Labor Code § 1198.5, Plaintiff and Employees are entitled to a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs.

132. Pursuant to California Labor Code § 226(f), Plaintiff is entitled to a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost, and the other Class members similarly situated are similarly entitled.

## ELEVENTH CAUSE OF ACTION

**FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802**

**(Against All Defendants)**

133. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

134. Plaintiff is informed and believes and based thereon alleges that throughout the period applicable, Defendants required Plaintiff and the Class members to pay for necessary work related expenses they incurred. These included the cell phone-related expenses Plaintiff incurred in responding to calls from management on his personal phone, use of his personal office supplies, such as a stapler to be able to work as a cashier, and uniform maintenance for the mandated uniforms required by the Defendants. Plaintiff and the Class members must be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so.

135. Defendants thus followed a uniform policy and practice of failing to reimburse Employees for these necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

136. Defendants' knowing and willful failure to reimburse lawful necessary work related expenses and losses to Plaintiff and the Class members resulted in damages because, among other things, Defendants did not inform employees of their right to be reimbursed for those work related expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and necessary expenses was an expected and essential function of their

1 employment with Defendants and that failure to incur those expenses would have adverse  
2 consequences on their employment.

3 137. Therefore, Plaintiff and the Class members are entitled to reimbursement for any  
4 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph  
5 9 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while  
6 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed  
7 from the date Plaintiff and the Class members incurred those expenses. Further, Plaintiff and the  
8 Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

9 **TWELFTH CAUSE OF ACTION**

10 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

11 **(Against All Defendants)**

12 138. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth  
13 in full herein. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,  
14 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of  
15 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and  
16 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting  
17 the public interest within the meaning of Code of Civil Procedure § 1021.5.

18 139. Plaintiff is a "person" within the meaning of Business & Professions Code  
19 § 17204, has suffered injury, and therefore has standing to bring this cause of action for  
20 injunctive relief, restitution, and other appropriate equitable relief.

21 140. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair  
22 business practices. By the conduct alleged herein, Defendants' practices were deceptive and  
23 fraudulent in that Defendants' policy and practice failed to provide the required amount of  
24 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and  
25 Class members for all hours worked, due to systematic business practices as alleged herein that  
26 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare  
27 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*  
28 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California

1 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

2 141. Wage-and-hour laws express fundamental public policies. Paying employees their  
3 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental  
4 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State  
5 vigorously to enforce minimum labor standards, to ensure that employees are not required or  
6 permitted to work under substandard and unlawful conditions, and to protect law-abiding  
7 employers and their employees from competitors who lower costs to themselves by failing to  
8 comply with minimum labor standards.

9 142. Defendants have violated statutes and public policies. Through the conduct  
10 alleged in this Complaint Defendants have acted contrary to these public policies, have violated  
11 specific provisions of the Labor Code, and have engaged in other unlawful and unfair business  
12 practices in violation of Business & Professions Code § 17200 *et seq.*; which conduct has  
13 deprived Plaintiff, and all persons similarly situated, and all interested persons, of the rights,  
14 benefits, and privileges guaranteed to all employees under the law.

15 143. Defendants' conduct, as alleged above, constitutes unfair competition in violation  
16 of the Business & Professions Code § 17200 *et seq.*

17 144. By engaging in the conduct herein alleged, by failing to pay wages and overtime,  
18 failing to provide meal periods and rest breaks, etc., Defendants either knew or in the exercise of  
19 reasonable care should have known that their conduct was unlawful; therefore, their conduct  
20 violates the Business & Professions Code § 17200 *et seq.*

21 145. By the conduct alleged herein, Defendants have engaged and continue to engage  
22 in a business practice which violates California and federal law, including but not limited to, the  
23 applicable Industrial Wage Order(s), the California Code of Regulations, and the California  
24 Labor Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this  
25 Court should issue declaratory and other equitable relief pursuant to California Business &  
26 Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to  
27 constitute unfair competition, including restitution of wages wrongfully withheld.

28

1           146. As a proximate result of the above-mentioned acts of Defendants, Employees  
2 have been damaged, in a sum to be proven at trial.

3           147. Unless restrained by this Court Defendants will continue to engage in such  
4 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court  
5 should make such orders or judgments, including the appointment of a receiver, as may be  
6 necessary to prevent the use by Defendants or their agents or employees of any unlawful or  
7 deceptive practice prohibited by the Business & Professions Code, including but not limited to  
8 the disgorgement of such profits as may be necessary to restore Employees to the money  
9 Defendants have unlawfully failed to pay.

10                                   **THIRTEENTH CAUSE OF ACTION**

11                                   **PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.***

12                                   **(Against All Defendants)**

13           148. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth  
14 in full herein.

15           149. Plaintiff and the Employees in the Class are also aggrieved employees as defined  
16 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and  
17 either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time  
18 period.

19           150. In failing to pay Aggrieved Employees minimum wages and overtime, not  
20 providing proper meal and rest periods, failing to provide accurate itemized wage statements,  
21 and failing to pay Employees wages upon termination or timely upon resignation, all discussed  
22 above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as  
23 required under Labor Code § 204. Defendants also failed to maintain records showing accurate  
24 hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code §  
25 1174 and paragraph 7 of the applicable IWC Wage Orders.

26           151. As such, Employees seek wages and penalties under Labor Code §§ 2698 and  
27 2699 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5,  
28 including the penalty provisions, without limitation, based, inter alia, on the following

1 California Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512,  
2 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 et  
3 seq.

4 152. More specifically, after complying with the notice procedures of Labor Code §  
5 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General  
6 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above-  
7 addressed underlying claims and seeking penalties as specified by the applicable corresponding  
8 provisions, including as follows:

9 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all  
10 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime  
11 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and  
12 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s)  
13 seeking all civil and statutory penalties available and applicable, and wages, under Labor Code  
14 §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs  
15 pursuant to Labor Code § 2699(g)(1);

16 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved  
17 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to  
18 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under  
19 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC  
20 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under  
21 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,  
22 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs  
23 pursuant to Labor Code § 2699(g)(1);

24 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to  
25 provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and  
26 failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor  
27 Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage  
28 Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor

Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages, under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections: For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

153. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also seeks the penalties and remedies set forth in Labor Code § 558, which states:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages...

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

154. Plaintiff has exhausted his administrative remedies by submitting a certified letter to the LWDA and Defendants on April 12, 2024 (LWDA-CM-1021933-24) addressing in detail the specific provisions of the Labor Code Defendants have violated and addressing the facts and legal theories to support the alleged violations and requested penalties. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed herein and in the PAGA Notice letter and the original Complaint.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;

1           5.       For compensatory damages in the amount of the hourly wage made by Employees  
2 for each missed or deficient meal period where no premium pay was paid therefor from four (4)  
3 years prior to the filing of this action, as may be proven;

4           6.       For compensatory damages in the amount of the hourly wage made by Employees  
5 for each day requisite rest breaks were not provided or were deficiently provided where no  
6 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as  
7 may be proven;

8           7.       For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

9           8.       For restitution and/or damages and penalties for Defendants' failure to pay all  
10 wages due twice monthly under Labor Code § 204, as may be proven;

11          9.       For restitution and/or damages for all amounts unlawfully withheld from the  
12 wages for all class members in violation of Labor Code § 221, as may be proven;

13          10.      For penalties pursuant to Labor Code § 203 for all Employees who quit or were  
14 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

15          11.      For penalties pursuant to Labor Code § 1174.5, as may be proven;

16          12.      For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

17          13.      For restitution for unfair competition pursuant to Business & Professions Code  
18 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

19          14.      For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

20          15.      For penalties under Labor Code § 558, as may be proven;

21          16.      For an order enjoining Defendants and their agents, servants, and employees, and  
22 all persons acting under, in concert with, or for them, from acting in derogation of any rights or  
23 duties adumbrated in this Complaint;

24          17.      For other wages and penalties under the Labor Code as may be proven;

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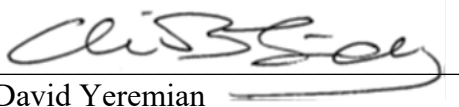
- 1           18.     For all general, special, and incidental damages as may be proven;
- 2           19.     For an award of pre-judgment and post-judgment interest;
- 3           20.     For an award providing for the payment of the costs of this suit;
- 4           21.     For an award of attorneys' fees; and
- 5           22.     For such other and further relief as this Court may deem proper and just.

6

7     DATED: June 17, 2024

D.LAW, INC.

8

9           By  \_\_\_\_\_

10           David Yeremian

11           Alvin B. Lindsay

12           Jean Hopkins Power

13           Attorneys for Plaintiff Emilio Rodriguez

14           and the putative class

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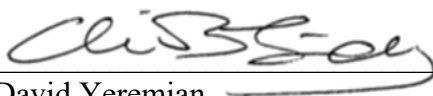
**DEMAND FOR JURY TRIAL**

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

DATED: June 17, 2024

D.LAW, INC.

By



David Yeremian  
Alvin B. Lindsay  
Jean Hopkins Power  
Attorneys for Plaintiff Emilio Rodriguez  
and the putative class

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO:

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

On June 17, 2024, I served the foregoing: **FIRST AMENDED CLASS ACTION COMPLAINT** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Arturo Castaneda, Agent for Service of Process  
**A M Castaneda, Incorporated d/b/a Castaneda's Mexican Food**  
1090 3<sup>rd</sup> Ave. Ste. 19  
Chula Vista, CA 91911

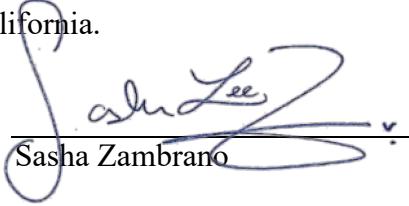
☒ **(BY MAIL)** I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

☐ **(COURTESY COPY BY ELECTRONIC TRANSMISSION)** by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

☐ **(BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒ **(STATE)** I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 17, 2024, at Glendale, California.

  
Sasha Zambrano

|                                                                                                                                                                                                     |                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
| <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b><br>STREET ADDRESS: 330 W Broadway<br>MAILING ADDRESS: 330 W Broadway<br>CITY AND ZIP CODE: San Diego CA 92101-3827<br>BRANCH NAME: Central | <i>FOR COURT USE ONLY</i>                  |
| Short Title: Rodriguez vs A M Castaneda [IMAGED]                                                                                                                                                    |                                            |
| <b>NOTICE OF CONFIRMATION OF ELECTRONIC FILING</b>                                                                                                                                                  | CASE NUMBER:<br>37-2024-00017527-CU-OE-CTL |

San Diego Superior Court has reviewed the electronic filing described below. The fee assessed for processing and the filing status of each submitted document are also shown below.

**Electronic Filing Summary Data**

Electronically Submitted By: Alvin Lindsay  
On Behalf of: Emilio Rodriguez  
Transaction Number: 22092707  
Court Received Date: 06/17/2024  
  
Filed Date: 06/17/2024  
Filed Time: 04:31 PM  
  
Fee Amount Assessed: \$150.00  
Case Number: 37-2024-00017527-CU-OE-CTL  
Case Title: Rodriguez vs A M Castaneda [IMAGED]  
Location: Central  
Case Type: Other employment  
Case Category: Civil - Unlimited  
Jurisdictional Amount: > 35000

|                      |                                                       |
|----------------------|-------------------------------------------------------|
| <b><u>Status</u></b> | <b><u>Documents Electronically Filed/Received</u></b> |
|----------------------|-------------------------------------------------------|

|          |                              |
|----------|------------------------------|
| Accepted | Amended Complaint<br>(First) |
|----------|------------------------------|

|                      |                                                       |
|----------------------|-------------------------------------------------------|
| <b><u>Status</u></b> | <b><u>Documents Electronically Filed/Received</u></b> |
|----------------------|-------------------------------------------------------|

|          |                                                             |
|----------|-------------------------------------------------------------|
| Accepted | Proof of Service of 30-day Summons & Complaint - Substitute |
|----------|-------------------------------------------------------------|

|          |                            |
|----------|----------------------------|
| Accepted | Notice of Jury Fee Deposit |
|----------|----------------------------|

**Comments**

**Clerk's Comments:**

**Electronic Filing Service Provider Information**

Service Provider: LegalConnect  
Email: support@legalconnect.com  
Contact Person: LEGALCONNECT Support  
Phone: (800) 909-6859