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Attorney for Plaintiff,
Lloyd Smith, on behalf of the general public, and other “aggrieved employees”

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

LLOYD SMITH, on behalf of the general
public, and other “aggrieved employees”,

Plaintiff,

vs.

J & J SNACK FOODS CORP. OF
CALIFORNIA, a California Corporation, and
DOES 1 through 10, inclusive.

Defendants.

CASE NO. CIVSB2426924

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. PENALTIES PURSUANT TO
LABOR CODE SECTION 2699(f)
FOR VIOLATIONS OF LABOR
CODE §§ 226.7, 512, 558, 510, 1194,
1194.2, 226(a),(e) 1174(d), 201-203,
204(a)(b), 2802, 210, 218**

DEMAND FOR JURY TRIAL

Plaintiff Lloyd Smith (“Plaintiff”), on behalf the general public, and other “aggrieved
employees” complains of Defendants as follows:

I. INTRODUCTION

1. This is a Representative Action, pursuant to Labor Code § 2698, 2699 et seq., on
behalf of Plaintiff, and on behalf of the general public, and other “aggrieved employees” who are
employed by, or were formerly employed by J & J Snack Foods Corp. of California, and any
subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”) within
California.

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

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

5 3. Plaintiff also claims that Defendant has failed to pay all overtime wages due to non-
6 exempt employees. As a result, employees are not properly compensated for work performance in
7 excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a
8 workweek at a rate of no less than one and one-half times the regular rate of pay. Employees of
9 Defendant regularly work in excess of eight (8) hours in a day or more than forty (40) hours per
10 week and do not receive overtime compensation at a rate of one and one half of their regular rate.
11 Plaintiff and Defendant's California employees were forced to work overtime and were not paid for
12 all hours worked including all straight time wages, and overtime wages. These failures to pay all
overtime wages constitute violations of Labor Code §§ 510, 1194, 1194.2.

13 4. Defendant failed to issue Plaintiff and Defendant's California employees accurately
14 itemized wage statements. As Defendant failed to compensate Plaintiff and Defendant's California
15 employees with all wages due, as detailed above, their wage statements failed to accurately state all
16 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
17 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable
18 hourly rates during the pay period and the corresponding number of hours worked, in violation of
19 Labor Code § 226(a)(9), as a result of Defendant's failure to pay all overtime wages due. Moreover,
20 Plaintiff and the California employees wage statements' failed to accurately state the name and
21 address of the legal entity that is the employer in violation of Labor Code § 226(a)(8). Since the
22 wage statements provided to Plaintiff failed to accurately reflect the total number of Plaintiff's
worked hours, these violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff
and Defendant's California employees.

23 5. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's
24 California employees timely, accurate, itemized wage statements in accordance with Labor Code §
25 226 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
26 Defendant's California employees, and the records maintained by Defendants, have not accurately

1 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest
2 premiums, and total hour worked.

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

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

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

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

26 10. Plaintiff, on behalf of the general public, and other "aggrieved employees"
27 brings this action pursuant to Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a)(e), 1174(d),
28 201-203, 204(a)(b), 2802, 210, 218.

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

II. PARTIES

A. PLAINTIFF

12. Plaintiff Lloyd Smith is a resident of San Bernardino, California. At all times relevant herein, he was employed by Defendants in San Bernardino County, California. Plaintiff was employed by Defendants as a non-exempt, hourly employee in California, including in and around the city of Colton, County of San Bernardino. During Plaintiff's employment:

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

B. DEFENDANTS

13. Defendant J & J Snack Foods Corp. of California, is a California Corporation doing business in Colton, California. It operates within the State of California. Defendant employed Plaintiff and similarly situated employees within California. The violations alleged herein arose in Colton, California.

14. As used herein, the term "AGGRIEVED EMPLOYEES," and "DEFENDANTS' CALIFORNIA EMPLOYEES," shall mean Defendant J & J Snack Foods Corp. of California's non-exempt employees.

15. The true names and capacities, whether individual, corporate, associate, or otherwise,

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

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

12 **FACTUAL ALLEGATIONS**

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

22 18. Plaintiff also claims that Defendant has failed to pay all overtime wages due to non-
23 exempt employees. As a result, employees are not properly compensated for work performance in
24 excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a
25 workweek at a rate of no less than one and one-half times the regular rate of pay. Employees of
26 Defendant regularly work in excess of eight (8) hours in a day or more than forty (40) hours per
27 week and do not receive overtime compensation at a rate of one and one half of their regular rate.
28 Plaintiff and Defendant's California employees were forced to work overtime and were not paid for
all hours worked including all straight time wages, and overtime wages. These failures to pay all
overtime wages constitute violations of Labor Code §§ 510, 1194, 1194.2.

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1 19. Defendant failed to issue Plaintiff and Defendant's California employees accurately
2 itemized wage statements. As Defendant failed to compensate Plaintiff and Defendant's California
3 employees with all wages due, as detailed above, their wage statements failed to accurately state all
4 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
5 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable
6 hourly rates during the pay period and the corresponding number of hours worked, in violation of
7 Labor Code § 226(a)(9), as a result of Defendant's failure to pay all overtime wages due. Moreover,
8 Plaintiff and the California employees wage statements' failed to accurately state the name and
9 address of the legal entity that is the employer in violation of Labor Code § 226(a)(8). Since the
10 wage statements provided to Plaintiff failed to accurately reflect the total number of Plaintiff's
11 worked hours, these violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff
12 and Defendant's California employees.

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

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

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

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

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

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e),
1174(d), 201-203, 204(a)(b), 2802, 210, 218**

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

26. As a result of the acts alleged herein, Plaintiff seeks penalties under Labor Code § 2698 *et seq.* because of Defendants' violations of Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 201-203, 204(a)(b), 1174(d), 2802, 210, 218.

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

a. With respect to the violation of Labor Code § 2699(f) for violations of Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 1174(d), 201-203, 204(a)(b), 2802, 210, 218, \$100 for the initial violation per employee per pay period and \$200 for each subsequent violation per employee per pay period.

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

1 29. On June 24, 2024, Plaintiff sent a letter, by certified mail, return receipt requested, to
2 the LWDA and Defendants setting forth the facts and theories of the violations alleged against
3 Defendants, as prescribed by Labor Code § 2698 *et seq.* (**Exhibit “A”**). Pursuant to Labor Code §
4 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar
5 days of June 24, 2024. Plaintiff may therefore commence this action to seek penalties pursuant to
6 Labor Code § 2698 *et seq.*

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

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

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

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

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

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

 35. Pursuant to Labor Code §§ 226.7 and 512, Plaintiff seeks the payment of all meal and
rest period compensations, which he was owed since he commenced working for Defendants,
according to proof.

36. Additionally, Plaintiff is entitled to, and seeks, attorney's fees and costs, and
prejudgment interest.

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

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

38. Plaintiff also claims that Defendant has failed to pay all overtime wages due to non-
exempt employees. As a result, employees are not properly compensated for work performance in
excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a
workweek at a rate of no less than one and one-half times the regular rate of pay. Employees of
Defendant regularly work in excess of eight (8) hours in a day or more than forty (40) hours per
week and do not receive overtime compensation at a rate of one and one half of their regular rate.
Plaintiff and Defendant's California employees were forced to work overtime and were not paid for
all hours worked including all straight time wages, and overtime wages. These failures to pay all
overtime wages constitute violations of Labor Code §§ 510, 1194, 1194.2.

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

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

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

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

42. Defendant failed to issue Plaintiff and Defendant's California employees accurately itemized wage statements. As Defendant failed to compensate Plaintiff and Defendant's California employees with all wages due, as detailed above, their wage statements failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9), as a result of Defendant's failure to pay all overtime wages due. Moreover, Plaintiff and the California employees wage statements' failed to accurately state the name and address of the legal entity that is the employer in violation of Labor Code § 226(a)(8). Since the wage statements provided to Plaintiff failed to accurately reflect the total number of Plaintiff's worked hours, these violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendant's California employees.

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

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

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

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

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

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

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

12 49. More than 30 days have passed since Plaintiff’s employment ended with
13 Defendants.

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

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

19 51. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
20 forth herein.

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

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

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

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

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

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

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

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

18 59. Defendant further failed to reimburse its California employees for using their
19 personal cell phones for the benefit of Defendant. Labor Code section 2802 provides that "[a]n
20 employer shall indemnify his or her employee for all necessary expenditures or losses incurred
21 by the employee in direct consequence of the discharge of his or her duties." As such, Plaintiff
22 and Defendant's California employees have incurred reasonable and necessary expenses in the
23 course of their job duties, which were not reimbursed by Defendant, in violation of Labor Code
§ 2802.

24 60. As such, Plaintiff and Defendant's California employees have incurred
25 reasonable and necessary expenses in the course of their job duties, which were not reimbursed
26 by Defendant, in violation of Labor Code § 2802.

27 61. Plaintiff is entitled to reimbursement for these necessary expenditures, plus

1 interest and attorneys' fees and cost, under Labor Code § 2802.

2 62. Plaintiff also requests relief as described below.

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

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

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

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

21 **RELIEF REQUESTED**

22 WHEREFORE, Plaintiff prays for the following relief:

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

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

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

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

1 employees;

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

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

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

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

10 9. For penalties and other relief pursuant to Labor Code § 2698 et seq. for Plaintiff and
11 all other aggrieved employees;

12 10. An award providing for payment of costs of suit pursuant to Labor Code §
13 2699(g)(1);

14 11. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1);

15 12. An award of prejudgment and post-judgment interest;

16 13. An award providing for payment of costs of suit; and

17 14. Such other and further relief as this Court may deem just and proper.

18 Dated: August 30, 2024

OTKUPMAN LAW FIRM,
A Law Corporation

19 By:



20 ROMAN OTKUPMAN
21 Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

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

Dated: August 30, 2024

OTKUPMAN LAW FIRM,
A Law Corporation

By:



ROMAN OTKUPMAN
Attorneys for Plaintiff

EXHIBIT A

OTKUPMAN LAW FIRM, A LAW CORPORATION

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

June 24, 2024

VIA ELECTRONIC FILING

Labor & Workforce Development Agency

VIA CERTIFIED MAIL

J & J Snack Foods Corp. of California
5353 Downey Road
Vernon, CA 90058
Defendant certified mail # 7022 1670 0001 4771 1815

VIA CERTIFIED MAIL

Agent for Service of Process
Amanda Garcia
330 N Brand Blvd
Glendale, CA 91203
Agent certified mail # 7022 1670 0001 4771 1808

VIA CERTIFIED MAIL

J & J Snack Foods Corp of CA
5353 Downey Road
Vernon, CA 90058
Defendant certified mail # 7022 1670 0001 4771 1815

VIA CERTIFIED MAIL

J & J Snack Foods Corp. of California
751 S. Via Lata,
Colton, CA 92324
Defendant certified mail # 7022 1670 0001 4771 2003

Re: ***Lloyd Smith v. J & J Snack Foods Corp. of California , J & J Snack Foods Corp of CA
– Labor Code Violations of J & J Snack Foods Corp. of California, J & J Snack Foods
Corp of CA – Compliance Letter of California Labor Code § 2698 – Private Attorneys
General Act***

Dear Sir or Madam:

This office represents Lloyd Smith (“Plaintiff”), a California employee of J & J Snack Foods Corp. of California, J & J Snack Foods Corp of CA (“Defendants”). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

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

Plaintiff began working for Defendants on or about February 10, 2022. While working for Defendants as a Fryer, Plaintiff was earning twenty one dollars and sixty cents (\$21.60) per hour.

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

Plaintiff also claims that Defendant has failed to pay all overtime wages due to non-exempt employees. As a result, employees are not properly compensated for work performance in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay. Employees of Defendant regularly work in excess of eight (8) hours in a day or more than forty (40) hours per week and do not receive overtime compensation at a rate of one and one half of their regular rate. Plaintiff and Defendant’s California employees were forced to work overtime and were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay all overtime wages constitute violations of Labor Code §§ 510, 1194, 1194.2.

Defendant failed to issue Plaintiff and Defendant’s California employees accurately itemized wage statements. As Defendant failed to compensate Plaintiff and Defendant’s California employees with all wages due, as detailed above, their wage statements failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9), as a result of Defendant’s failure to pay all overtime wages due. Moreover, Plaintiff and the California employees wage statements’ failed to accurately state the name and address of the legal entity that is the employer in violation of Labor Code §

226(a)(8). Since the wage statements provided to Plaintiff failed to accurately reflect the total number of Plaintiff's worked hours, these violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendant's California employees.

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

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

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

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

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

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

Our office awaits your response.

Labor & Workforce Development Agency
J & J Snack Foods Corp. of California
J & J Snack Foods Corp of CA
June 24, 2024
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Very truly yours,

OTKUPMAN LAW FIRM

A handwritten signature in black ink, appearing to read 'Roman Otkupman', is written over a horizontal line. The signature is stylized with a large, sweeping 'R' and a long, horizontal stroke.

ROMAN OTKUPMAN