

SUMMONS ON FIRST AMENDED COMPLAINT
(CITACION JUDICIAL)

SUM-100

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

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

DEL TACO RESTAURANT SERVICES, INC.;
and DOES 1 to 50, Inclusive

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JAN 07 2010

John A. Clarke, Executive Officer/Clerk
By *Dawn Alexander*, Deputy
DAWN ALEXANDER

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

MARIO VALDEZ, JR., on behalf of himself and others similarly situated

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

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación

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

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

The name and address of the court is:
(El nombre y dirección de la corte es):
CALIFORNIA SUPERIOR COURT, COUNTY OF LOS ANGELES
111 NORTH HILL STREET
LOS ANGELES, CA 90012
CENTRAL DISTRICT

CASE NUMBER:
(Número del Caso):
BC426538

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
KINGSLEY & KINGSLEY, APC (818) 990-8300 FAX (818) 990-2903
ERIC B. KINGLSEY, ESQ. SBN-185123
DARREN M. COHEN, ESQ. SBN-221938
16133 VENTURA BL., #1200, ENGLEWOOD CLIFFS, CA 91316
JOHN A. CLARKE
L. KATZENSTEIN, ESQ. SBN-259230

DATE: _____ Clerk, by *DAWN ALEXANDER*, Deputy
(Fecha) _____ *(Secretario)* *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of *(specify)*:
- on behalf of *(specify)*:
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other *(specify)*:
- by personal delivery on *(date)*:



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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JAN 07 2010

5 Attorneys for Plaintiffs

John A. Clarke, Executive Officer/Clerk
By *Dawn Alexander*, Deputy
DAWN ALEXANDER

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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10
11 MARIO VALDEZ, JR., on behalf of
himself and others similarly situated,

12 Plaintiffs,

13 v.

14 DEL TACO RESTAURANT
15 SERVICES, INC.; and DOES 1 to 50,
Inclusive,

16 Defendants.
17

CASE NO.: BC426538

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

1. Failure to Provide Meal Breaks Under Labor Code §226.7
2. Failure to Provide Rest Breaks Under Labor Code §226.7
3. Penalties Pursuant to Labor Code §203
4. Violation of Business & Professions Code §17200
5. Penalties Pursuant to Labor Code §2699

18
19
20 Plaintiff MARIO VALDEZ, JR. on behalf of himself and all others similarly situated,
21 complains of defendants, and each of them, as follows:

22 I

23 **INTRODUCTION**

24 1. This is a Class Action, pursuant to Code of Civil Procedure §382, on behalf of plaintiff
25 and all individuals who hold or held the position of hourly employees and are earning or earned less
26 than double the minimum wage per hour, who are employed by, or formerly employed by DEL TACO
27 RESTAURANT SERVICES INC., and any subsidiaries or affiliated companies (hereinafter referred
28 to as "DEL TACO" and/ or "Defendants") within the State of California.

1 9. As an hourly employee, plaintiff was regularly required to:

2 (1) Work in excess of five (5) hours per day without being provided a meal period
3 and not being compensated one (1) hour of pay at the regular rate of compensation for each workday
4 that a meal period was not provided or provided after five (5) hours, all in violation of California labor
5 laws, regulations, and Industrial Welfare Commission Wage Orders; and

6 (2) Work without being provided a minimum ten (10)minute rest period for every
7 four (4) hours or major fraction thereof worked and not being compensated one (1) hour of pay at their
8 regular rate of compensation for each workday that a rest period was not provided.

9 10. Defendants willfully failed to compensate plaintiff and other hourly employees for wages
10 at the termination of their employment with defendants.

11 **B. Defendants**

12 11. Defendant DEL TACO RESTAURANT SERVICES INC. is a California corporation
13 operating in California. They own and operate several locations in the State of California. The
14 defendant's corporate address is 25521 Commercentre Dr., Lake Forest, CA 92630-8870. Defendant
15 employed plaintiff and similarly situated persons as hourly employees within California.

16 12. The true names and capacities, whether individual, corporate, associate, or otherwise, of
17 defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to plaintiff, who therefore
18 sues defendants by such fictitious names under Code of Civil Procedure §474. Plaintiff is informed and
19 believes, and based thereon alleges, that each of the defendants designated herein as a DOE is legally
20 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court
21 to amend this Complaint to reflect the true names and capacities of the defendants designated
22 hereinafter as DOES when such identities become known.

23 13. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted
24 in all respects pertinent to this action as the agent of the other defendants, carried out a joint scheme,
25 business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
26 attributable to the other defendants. Furthermore, defendants in all respects acted as the employer
27 and/or joint employer of plaintiff and the proposed class.

28 ///

1 III

2 FACTUAL BACKGROUND

3 14. Defendants hire hourly employees who work at various locations in California. These
4 employees have not been provided meal periods for work days in excess of five (5) hours, rest periods
5 for work periods of four (4) hours or major fractions thereof, and were not compensated one hours
6 wages in lieu thereof.

7 15. Plaintiff and the proposed class are, and at all times pertinent hereto, have been non-
8 exempt employees within the meaning of the California Labor Code, and the implementing rules and
9 regulations of the IWC California Wage Orders.

10 16. During the rest and meal period liability period, plaintiff and the members of the proposed
11 class were regularly required to work in excess of three and one-half hours (3 1/2) without being
12 provided a rest period and were regularly required to work in excess of five (5) hours per day, without
13 being provided a meal period.

14 17. Defendants did not fully compensate the proposed class for defendants' failure to provide
15 rest periods and meal periods during the rest and meal period liability period.

16 18. Defendants' requirement that plaintiff and the proposed class work through meal and rest
17 periods without paying legal compensation for failure to provide rest or meal periods during the liability
18 periods was willful and deliberate.

19 19. Defendants willfully failed to pay one hours wages in lieu of rest and meal periods, when
20 each employee quit or was discharged.

21 20. Defendants have failed to comply with Industrial Welfare Commission ("IWC") Wage
22 Order 5-2001(7) by failing to maintain time records showing when the employee begins and ends each
23 work period, meal periods, and total daily hours worked by itemizing in wage statements all deductions
24 from payment of wages and accurately reporting total hours worked by plaintiff and the members of
25 the proposed class.

26 21. Plaintiff and the proposed class are covered by California Industrial Welfare Commission
27 Occupational Wage Order No. 5-2001.

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IV

CLASS ACTION ALLEGATIONS

22. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent a class composed of and defined as follows:

All persons who are employed or have been employed by defendants as an hourly employee who for any pay period earned less than double the minimum wage per hour, in the State of California who, within four (4) years of the filing of this action and continuing.

23. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

24. This action has been brought and may properly be maintained as a class action under the provisions of §382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable.

A. Numerosity

25. The potential members of the proposed class as defined are so numerous that joinder of all the members of the proposed class is impracticable. While the precise number of proposed class members has not been determined at this time, plaintiff is informed and believes that defendants currently employ, and during the relevant time periods employed, over 100 hourly employees earning less than double the minimum wage per hour.

26. Accounting for employee turnover during the relevant periods necessarily increases this number substantially. Plaintiff alleges defendants' employment records would provide information as to the number and location of all proposed class members. Joinder of all members of the proposed class is not practicable.

B. Commonality

27. There are questions of law and fact common to the proposed class that predominate over any questions affecting only individual class members. These common questions of law and fact include, without limitation:

1 (1) Whether defendants violated Labor Code §§226.7 and 512, IWC Wage Order 5-
2 2001 or other applicable IWC Wage Orders, by failing to provide meal periods on days they worked
3 in excess of five (5) hours and failing to compensate said employees one (1) hours wages in lieu of meal
4 periods;

5 (2) Whether defendants violated Labor Code §§226.7 and 512, Wage Order 5-2001 or
6 other applicable IWC Wage Orders, by failing to provide daily rest periods for every three and one-half
7 (3 1/2) hours or major fraction thereof worked and failing to compensate said employees one (1) hours
8 wages in lieu of rest periods;

9 (3) Whether defendants violated §§201-203 of the Labor Code by failing to pay
10 compensation due and owing at the time that any proposed class member's employment with defendants
11 terminated;

12 (4) Whether defendants violated §17200 et seq. of the Business & Professions Code
13 by failing to provide wages and compensation to hourly employees;

14 (5) Whether plaintiff and the members of the proposed class are entitled to equitable
15 relief pursuant to Business & Professions Code §17200, et. seq.; and

16 (6) Whether defendants violated §2699 et. seq. of the Labor Code by engaging in the
17 acts previously alleged.

18 **C. Typicality**

19 28. The claims of the named plaintiff are typical of the claims of the proposed class. Plaintiff
20 and all members of the proposed class sustained injuries and damages arising out of and caused by
21 defendants' common course of conduct in violation of laws, regulations that have the force and effect
22 of law and statutes as alleged herein.

23 **D. Adequacy of Representation**

24 29. Plaintiff will fairly and adequately represent and protect the interests of the members of
25 the proposed class. Counsel who represents plaintiff is competent and experienced in litigating large
26 employment class actions.

27 **E. Superiority of Class Action**

28 30. A class action is superior to other available means for the fair and efficient adjudication

1 of this controversy. Individual joinder of all proposed class members is not practicable, and questions
2 of law and fact common to the proposed class predominate over any questions affecting only individual
3 members of the proposed class. Each member of the proposed class has been damaged and is entitled
4 to recovery by reason of defendants' illegal policy and/or practice of denying class members rest and
5 meal periods without legal compensation and failing to pay all wages due.

6 31. Class action treatment will allow those similarly situated persons to litigate their claims
7 in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is
8 unaware of any difficulties that are likely to be encountered in the management of this action that would
9 preclude its maintenance as a class action.

10 V

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PROVIDE MEAL BREAK PER LABOR CODE §226.7**

13 32. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs
14 as if fully set forth herein.

15 33. Labor Code §226.7 requires an employer to pay an additional hour of compensation for
16 each meal period the employer fails to provide. Employees are entitled to a meal period of a least thirty
17 (30) minutes per five (5) hour work period. Plaintiff and the class consistently worked over five (5)
18 hour shifts. Pursuant to the Code, plaintiff and the class are entitled to a meal period of not less than
19 thirty (30) minutes prior to exceeding five (5) hours of employment.

20 34. Defendants failed to provide plaintiff and others with timely meal breaks of not less than
21 thirty (30) minutes as required by the Labor Code during the relevant class period.

22 35. Pursuant to Labor Code §226.7, plaintiff is entitled to damages in an amount equal to one
23 (1) hour of wages per missed meal break, in a sum to be proven at trial.

24 VI

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO ALLOW REST BREAKS PURSUANT TO LABOR CODE §226.7**

27 36. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs
28 as if fully set forth herein.

1 as if fully set forth herein.

2 45. This is a Representative Private Attorney General Action and Class Action for Unfair
3 Business Practices. Plaintiff on his own behalf and on behalf of the general public, and on behalf of
4 others similarly situated, brings this claim pursuant to Business & Professions Code §17200, et seq.
5 The conduct of all defendants as alleged in this Complaint has been and continues to be unfair,
6 unlawful, and harmful to plaintiff, the general public, and the proposed class. Plaintiff seeks to enforce
7 important rights affecting the public interest within the meaning of C.C.P. §1021.5.

8 46. Plaintiff is a "person" within the meaning of Business & Professions Code §17204, and
9 therefore has standing to bring this cause of action for injunctive relief, restitution, and other
10 appropriate equitable relief.

11 47. Business & Profession Code §17200, et seq. prohibits unlawful and unfair business
12 practices.

13 48. Wage and hour laws express fundamental public policies. Providing employees with
14 meal and/or rest breaks are fundamental public policies of this State and of the United States. Labor
15 Code §90.5(a) articulates the public policies of this State to enforce vigorously minimum labor
16 standards, to ensure that employees are not required or permitted to work under substandard and
17 unlawful conditions, and to protect law-abiding employers and their employees from competitors who
18 lower their costs by failing to comply with minimum labor standards.

19 49. Defendants have violated statutes and public policies. Through the conduct alleged in this
20 Complaint, defendants, and each of them, have acted contrary to these public policies, have violated
21 specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices
22 in violation of Business & Profession Code §17200, et seq., depriving plaintiff, and all persons similarly
23 situated, and all interested persons of rights, benefits, and privileges guarantees to all employees under
24 law.

25 50. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in violation
26 of §17200 et. seq. of the Business & Professions Code.

27 51. Defendants by engaging in the conduct herein alleged, by not providing proper breaks,
28 either knew or in the exercise of reasonable care should have known that the conduct was unlawful.

1 As such it is a violation of §17200 et. seq. of the Business & Professions Code.

2 52. As a proximate result of the above mentioned acts of defendants, plaintiff and others
3 similarly situated have been damaged in a sum as may be proven.

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

11 IX

12 FIFTH CAUSE OF ACTION

13 PENALTIES PURSUANT TO LABOR CODE §2699

14 54. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs
15 as if fully set forth herein.

16 55. As a result of the acts alleged above, plaintiff seeks penalties under Labor Code §§2698
17 and 2699 because of defendants' violation of Labor Code §§201, 202, 203, 226(a), 226.7, 512, 1194,
18 and 1199 which call for civil penalties.

19 56. For each such violation, plaintiff and the proposed class are entitled to penalties in an
20 amount to be shown at the time of trial subject to the following formula:

- 21 a. For \$100 for the initial violation per employee per pay period
22 b. For \$200 for each subsequent violation per employee per pay period

23 57. These penalties shall be allocated 75% to the Labor and Workforce Development Agency
24 and 25% to the affected employees.

25 58. Plaintiff sent a certified letter to the LDWA and defendants as prescribed by the code
26 postmarked December 2, 2009. As no letter evidencing the LWDA's intention to investigate was
27 received within 33 calendar days, Plaintiffs are entitled to commence a civil action as though the
28 LWDA had chosen not to investigate per §2699.3(a)(2)(A). Therefore, under Labor Code

1 §2699.3(a)(2)(A), plaintiff may proceed and file a complaint for penalties pursuant to Labor Code
2 §2699.

3 **RELIEF REQUESTED**

4 **WHEREFORE**, plaintiff prays for the following relief:

5 1. For compensatory damages in the amount of plaintiff's and each class members' hourly
6 wage for each meal period missed or taken late from at least four (4) years prior to the filing of this
7 action to the present as may be proven;

8 2. For compensatory damages in the amount of plaintiff's and each class members' hourly
9 wage for each shift where rest period(s) were missed from at least four (4) years prior to the filing of
10 this action to the present as may be proven;

11 3. For penalties pursuant to Labor Code §203 for all employees who quit or were fired equal
12 to their daily wage times thirty (30) days;

13 4. An award of prejudgment and post judgment interest;

14 5. An order enjoining defendant and its agents, servants, and employees, and all persons
15 acting under, in concert with, or for it from failing to provide plaintiffs with proper meal and rest breaks
16 pursuant to Labor Code §§226.7, 512, and IWC 5-2001;

17 6. For restitution for unfair competition pursuant to Business & Professions Code §17200,
18 including disgorgement or profits, in an amount as may be proven;

19 7. For penalties pursuant to Labor Code §2699;

20 8. An award providing for payment of costs of suit;

21 9. An award of attorneys' fees; and

22 10. Such other and further relief as this Court may deem proper and just.

23 **DEMAND FOR JURY TRIAL**

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

25 DATED: January 05, 2010

KINGSLEY & KINGSLEY, APC

26 By: 

27 LIANE L. KATZENSTEIN
28 ATTORNEY FOR PLAINTIFFS

