

1 **S. BRETT SUTTON 143107**
JARED HAGUE 251517
2 **JONATHAN W. BLACK 280421**
SUTTON HAGUE LAW CORPORATION, P.C.
3 5200 N. Palm Avenue, Suite 203
Fresno, California 93704
4 Telephone: (559) 325-0500
Facsimile: (559) 981-1217
5 Attorneys for Defendants
6 **SAPUTO CHEESE USA, INC.**

7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**

9 * * *

10 DON M. VASQUEZ, individually and on
11 behalf of others similarly situated,

12 Plaintiff,

13 vs.

14 SAPUTO CHEESE USA INC., a Delaware
15 Corporation; and DOES 1 through 25, inclusive,

16 Defendants.

Case No.

**DEFENDANT SAPUTO CHEESE USA
INC.'S NOTICE OF REMOVAL OF
CIVIL ACTION TO UNITED STATES
DISTRICT COURT**

(Tulare County Superior Court Case
No. 282978)

Complaint Filed: May 27, 2020

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN
2 DISTRICT OF CALIFORNIA AND PLAINTIFF DON M. VASQUEZ AND HIS
3 ATTORNEYS OF RECORD:

4 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441, and 1446,
5 Defendant Saputo Cheese USA, Inc. (“Defendant”) hereby removes this action from the Superior
6 Court of the State of California for the County of Tulare to the United States District Court for
7 the Eastern District of California. Defendant removes this action on the following grounds:

8 **I. REMOVAL JURISDICTION AND VENUE**

9 1. Defendant removes this action to this Court because it is a civil action that
10 satisfies the requirements stated in the Class Action Fairness Act of 2005 (“CAFA”), codified in
11 part at 28 U.S.C. § 1332(d). *See also* 28 U.S.C. §§ 1441(a), 1446. Under the CAFA, a civil
12 complaint may be properly removed where: (1) any member of a putative class of plaintiffs is a
13 citizen of a different state than the defendant; (2) the aggregate number of members of the
14 putative class is 100 or more; and (3) the amount in controversy is more than \$5,000,000 total.
15 28 U.S.C. § 1332(d).

16 2. This Court is the proper court for venue because the Eastern District of California
17 embraces the place where the state action case and is pending, i.e. Tulare County. 28 U.S.C. §
18 1441(a). Venue is proper in Fresno pursuant to Eastern District of California Local Rule 120(d).

19 3. To be clear, Defendant does not concede that Plaintiff can or will establish any
20 liability under any of his legal theories, that Plaintiff’s putative class is susceptible of
21 certification, or that Plaintiff or the putative class have suffered any damages. To the contrary,
22 Defendant contends that class and representative treatment are inappropriate and that Plaintiff
23 and the putative class are not entitled to recover any of the amount in controversy. The analysis
24 that follows takes Plaintiff’s allegations as true, and assumes claims will survive, merely and
25 exclusively for purposes of establishing jurisdiction in this Court under the CAFA.

26 **II. RELEVANT PROCEDURAL FACTS**

27 4. On May 27, 2020, Plaintiff filed his unverified complaint (“Complaint”) entitled
28 *DON M. VASQUEZ, individually and on behalf of all others similarly situated, Plaintiff, vs.*

1 *SAPUTO CHEESE USA,, INC., a Delaware Corporation; and DOES 1 through 25, inclusive,*
2 *Defendants,* in the Tulare County Superior Court of the State of California, Case No. 282978.

3 5. The Complaint alleges causes of action for **(1)** Failure to Pay Minimum Wages
4 (Lab. Code §§1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and IWC Order 8-2001 §4);
5 **(2)** Failure to Pay Overtime Wages (Lab. Code § 510, 1194, 1198, and IWC Wage Order 8-2001
6 § 3); **(3)** Failure to Pay Reporting Time Pay (IWC Wage Order 8-2001 §5); **(4)** Failure to
7 Provide Meal Periods (Lab. Code §226.7, 512, and IWC Wage Order 8-2001 §11); **(5)** Failure to
8 Provide Rest Periods (Lab. Code §226.7 and IWC Wage Order 8-2001 §12); **(6)** Failure to
9 Provide Accurate Itemized Wage Statements (Lab. Code §226 and IWC Wage Order 8-2001 §7);
10 **(7)** Failure to Reimburse Business Expenses (Lab. Code §2802 and IWC 8-2001 Wage Order
11 §9); **(8)** Failure to Timely Pay Wages Due During Employment (Lab. Code §§ 204, 210, and
12 IWC Wage Order 8- 2001); **(9)** Failure to Timely Pay Wages Due Upon Separation of
13 Employment (Lab. Code §§201, 202, 203, and IWC Wage Order 8-2001); and **(10)** Violation of
14 the Unfair Competition Law (Bus. & Prof. Code §§ 17200–17208).

15 6. On June 26, 2020, Defendant was served with a copy of the Summons and
16 Complaint. A true and correct copy of the Summons, Complaint, and accompanying documents
17 served is attached hereto as Exhibit 1.

18 7. On July 23, 2020, filed an answer to the complaint. A true and correct copy of the
19 Answer is attached here hereto as Exhibit 2.

20 8. Consistent with 28 U.S.C. § 1446(a), true and correct copies of all pleadings in
21 the state court action are attached to this Notice of Removal.

22 **III. TIMELINESS OF REMOVAL**

23 9. A defendant must file a notice of removal 30 days after receiving the complaint,
24 “through service or otherwise.” 28 U.S.C. § 1446(b)(1).

25 10. A defendant’s statutory period to remove does not begin to run, and a defendant is
26 not required to remove, until the defendant has been served. *Murphy Bros., Inc. v. Michetti Pipe*
27 *Stringing, Inc.*, 526 U.S. 344, 347–48 (1999).

28 //

1 11. Pursuant to 28 U.S.C. 1446(b)(1), this removal is timely because Defendant filed
2 this Notice of Removal within 30 days of service of the Summons and Complaint in the state
3 court Action.

4 **IV. DEFENDANT REMOVES THIS ACTION PURSUANT TO THE CAFA**

5 12. Under the CAFA, “district courts shall have original jurisdiction of any civil
6 action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of
7 interest and costs, and is a class action in which . . . any member of a class of plaintiffs is a
8 citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2). In addition, the
9 number of members of all proposed plaintiff classes, in the aggregate, must be 100 or more.
10 28 U.S.C. § 1332(d)(5)(B).

11 13. This Court has jurisdiction over this action pursuant to the CAFA because the
12 proposed plaintiff class contains at least 100 members, there is diversity between at least one
13 proposed class member and one defendant, and the total amount in controversy exceeds
14 \$5,000,000.

15 **A. The Putative Class Contains Well-Over 100 Members**

16 14. The CAFA only applies to class actions where the proposed plaintiff members
17 total 100 or more. 28 U.S.C. § 1332(d)(5)(B).

18 15. Here, Plaintiff seeks to certify the “Plaintiff Class,” a group of “All current and
19 former non-exempt employees who worked for Defendants in the State of California from April
20 6, 2016 to the date of trial.” Exhibit 1, ¶24.

21 16. Plaintiff also seeks to certify two subclasses: (1) “Waiting Time Subclass,”
22 consisting of all members of the Plaintiff Class members who separated their employment from
23 Defendant between April 6, 2017, to the date of trial; and (2) “Wage Statement Subclass,”
24 consisting of all members of the Plaintiff Class who received at least one incorrect wage
25 statement in the year preceding the filing of this action up through the trial date. Exhibit 1, ¶ 25.

26 17. Over the class period, there are at least 312 former employees and 1072 current
27 hourly, non-exempt employees. Declaration of Christine Hendricks (“Hendricks Decl.”), ¶ 3.
28 This exceeds the minimum class member threshold.

1 **B. “Minimal Diversity” Is Present**

2 18. Under the CAFA, diversity need not be “complete,” as is the case in non-CAFA
3 cases where removal is based on diversity of the parties. Rather, any class member (named or
4 not) must be a citizen of a different state than any defendant. 28 USC § 1332(d)(2).

5 19. At all material times, Plaintiff—the only named party—has been a citizen of
6 California within the meaning of 28 U.S.C. § 1332(a), as his place of residence and domicile are,
7 and were, located within California. Hendrick Decl., ¶ 4; *Kanter v. Warner-Lambert Co.*, 265
8 F.3d 853, 857 (9th Cir. 2001) (“A person’s domicile is his permanent home, where he resides
9 with the intention to remain or to which he intends to return.”); *see also Johnson v. Mitchell*, No.
10 2:10-cv-1968 GEB GGH PS, 23 2012 WL 3260458, at *2 (E.D. Cal. Aug. 8, 2012) (“a party’s
11 place of residence is *prima facie* evidence of domicile”).

12 20. Likewise, by definition, the putative class includes individuals who, like Plaintiff,
13 are California citizens. As long as any one of the 1384 putative class members is a California
14 citizens, minimal diversity is met. According to company records, at least one putative class
15 member at each of Saputo’s five California locations is a resident of California. Hendrick Decl.,
16 ¶ 5.

17 21. If a party is a corporation, as is Defendant, it is a citizen of both its state of
18 incorporation and the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1).

19 22. Defendant is now and was at the commencement of this action a citizen of the
20 states of Delaware and Illinois, within the meaning of 28 U.S.C. § 1332. At all material times,
21 Defendant was a corporation organized under the laws of Delaware, and, at all material times,
22 Defendant has maintained its principal place of business, including its corporate headquarters, in
23 Illinois. Hendrick Decl., ¶ 6–7.

24 23. Plaintiff and Defendant are citizens of different states, just as Defendant’s
25 citizenship is different from all or virtually all of the putative class and subclass members. Their
26 diverse citizenship qualifies this action for federal jurisdiction under the CAFA.

27 //

28 //

1 **C. The Matter in Controversy Exceeds the Sum or Value of \$5,000,000**

2 24. For the CAFA to apply, the total amount in controversy must exceed \$5,000,000
3 in the aggregate. 28 USC § 1332(d)(2). As set forth in this section, conservative estimates of
4 Plaintiff's claims are far in excess of the statutory threshold.

5 25. The putative class's average hourly rates across its five California facilities range
6 between \$19.63 and \$28.22. The average base rate of these employees is \$24.92/hour. Hendrick
7 Decl., ¶ 8.

8 **1. Meal Period Claim**

9 26. Plaintiff alleges that Defendant failed to provide the Plaintiff Class "timely,
10 uninterrupted, off-duty meal periods of no less than thirty minutes before their fifth hour of
11 work, and failed to compensate Plaintiff and members of the Plaintiff Class for these missed
12 meal periods." Exhibit 1, Complaint, ¶ 18. Furthermore, Plaintiff alleges that the Plaintiff Class
13 was required to be "on duty" during meal periods, such that they had to be ready to immediately
14 return to work at Defendant's direction. Due to this alleged requirement, the Plaintiff Class's
15 meal periods were "regularly" interrupted. *Id.*

16 27. Current and former employees typically work (or worked) five days per
17 workweek. From May 27, 2016 to the present, more than 216 workweeks have elapsed, and the
18 1384 combined current and former employees in the putative Plaintiff Class have worked over
19 231,246 workweeks total. Hendrick Decl., ¶ 9.

20 28. While Plaintiff does not allege the precise number of missed meal periods per
21 workweek, he claims the Plaintiff Class effectively was always on-duty because they had to be
22 ready to return from a meal period immediately, and meal periods were missed or interrupted
23 "regularly." *See Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 260 (2016) ("During
24 required rest periods, employers must relieve their employees of all duties and relinquish any
25 control over how employees spend their break time."); *Brinker Restaurant Corp. v. Sup.Ct.*
26 (2012) 53 Cal.4th 1004, 1034–41 (holding that employers need not ensure that no work is
27 performed during that period, but must provide a work-free meal period for employees).

28 //

1 29. While a fair reading of the Complaint suggests Plaintiff is claiming a non-
2 compliant meal period every workday, conservatively estimating one missed meal period per
3 workweek instead, and reducing the total number of workweeks by 10% to account for things
4 like sick time, holidays, and vacation, there would be approximately 208,121 meal period
5 violations, and the penalty for a violation is one hour's pay at the regular rate. At the average
6 rate of \$24.92/hour, total meal period violations would be \$5,186,375.32. Hendrick Decl., ¶¶ 3,
7 8–9. Thus, under Defendant's conservative estimate, on the basis of Plaintiff's meal period
8 claim alone, this action meets the minimum amount under the CAFA.

9 **2. Rest Period Claim**

10 30. Similar to Plaintiff's meal period claim, Plaintiff also alleges rest periods were
11 "regularly" missed or otherwise noncompliant. Exhibit 1, Complaint, ¶ 19. And because the
12 Plaintiff Class allegedly had to be prepared to return to work immediately during any rest period,
13 Plaintiff also appears to be alleging there were no compliant rest periods over the putative class
14 period. *Id.*

15 31. Like meal period violations, the penalty for a rest period violation is one hour of
16 pay at the regular rate per each day a violation occurred. Applying the same conservative
17 estimates and parameters as above (i.e., one violation per workweek and a 10% reduction of
18 workweeks), the value of total rest period violations at the average pay rate would also be
19 \$5,186,375.32. Hendrick Decl., ¶¶ 3, 8–9.

20 **3. Waiting Time Penalties**

21 32. For the relevant time period, there are 312 former employees who constitute the
22 putative Waiting Time Subclass. Pursuant to Labor Code § 203, if an employer willfully fails to
23 pay all wages owing in conformance with applicable law at the time of termination, the employer
24 is liable for a penalty of one day's wages up to a maximum of thirty days. As of the filing of this
25 Notice of Removal, more than 30 days have elapsed since all or nearly all of these employees'
26 employment terminated. Hendrick Decl., ¶ 10.

27 33. In his Complaint, Plaintiff alleges that "Defendants willfully failed to pay Plaintiff
28 and Waiting Time Subclass members all their earned wages upon termination including but not

1 limited to, proper minimum wages and overtime and double-time compensation” as required.
2 Exhibit 1, Complaint, ¶ 121. This allegation is without limit as to the number of violations, and
3 it would also be fair to read the Complaint as claiming violations occurred for each of the 312
4 subclass members. When calculating the amount of waiting time penalties for the purposes of
5 removal and/or remand, courts will use the statutory maximum, especially when, as is the case
6 here, the plaintiff alleges no less. *See, e.g., Korn v. Polo Ralph Lauren Co.*, 536 F. Supp. 2d
7 1199, 1204–05; *Navarro v. Servisair, LLC*, No. C 08-02716, 2008 WL 3842984, at *9 (N.D. Cal.
8 Aug. 14, 2008); *Moppin v. Los Robles Reg’l Med. Ctr.*, 2015 WL 5618872, at *3, *5 (C.D. Cal.
9 2015); *Tajonar v. Echosphere, L.L.C.*, 14CV2732-LAB RBB, 2015 WL 4064642, at *4 (S.D.
10 Cal. July 2, 2015).

11 34. Nonetheless, for the purposes of this Notice of Removal, Defendant will estimate
12 waiting time penalties are at issue for one half of the subclass. Under this conservative estimate
13 and at the statutory maximum, i.e., 30 days’ pay, and average rate of \$24.92/hour, waiting time
14 penalties at issue are \$933,004.80 (8 x 30 x 24.92 x 312 x .5). Hendrick Decl., ¶¶ 8, 10.

15 **4. Wage Statement Penalties**

16 35. Labor Code § 226 requires employers to furnish their employees an accurate,
17 itemized statement containing several enumerated items at the time of wages are paid.
18 Violations of the statute result in a \$50 penalty for the initial violation and a \$100 penalty for
19 each subsequent pay period, up to a \$4,000 maximum. Labor Code § 226(e)(1).

20 36. Here also, Plaintiff alleges violations without limit, and in this case, given that
21 just one meal period violation, one rest period violation, or one unpaid overtime violation in a
22 two-week pay period would result in a violation of Labor Code § 226, it is reasonable to assume
23 a violation would occur for each pay period for each employee. Exhibit 1, Complaint, ¶ 94.

24 37. For the putative Wage Statement Subclass, there were 29 pay periods and 31,165
25 workweeks worked. Hendrick Decl., ¶¶ 8, 11. Assuming each wage statement was inaccurate,
26 applying a 10% workweek reduction (as with the meal and rest period calculations), and
27 multiplying by \$50 and \$100 for the first and subsequent pay periods respectively, the total
28 potential penalties owed to the putative Wage Statement Subclass total \$2,751,211.43.

1 //

2 **5. Attorneys' Fees**

3 38. Plaintiff specifically seeks attorneys' fees in nearly all of his causes of action.
 4 *See, e.g.*, Exhibit 1, Complaint, ¶¶ 46, 57, 77, 89, 102, 111, 116, 138. In determining whether a
 5 complaint meets the requisite amount in controversy, courts consider the aggregate value of
 6 claims for damages and attorneys' fees. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155
 7 (9th Cir. 1998). Moreover, many district courts within the Ninth Circuit have assessed estimated
 8 fees through trial when calculating the amount in controversy. *See, e.g., Ponce v. Med. Eyeglass*
 9 *Ctr., Inc.*, No. 15-CV-04035, 2015 WL 4554336, at *3 (C.D. Cal. July 27, 2015); *Cagle v. C&S*
 10 *Wholesale Grocers, Inc.*, No. 2:13-cv-02134-MCE-KJN, 2014 WL 651923, at *10-11 (E.D.
 11 Cal. Feb. 19, 2014); *Simmons v. PCR Technology*, 209 F. Supp. 2d at 1034-35 (2002).

12 39. The Ninth Circuit has established a benchmark of 25% of damages for an award
 13 of attorneys' fees in class actions, as a reasonable basis to determine the amount of attorneys'
 14 fees likely to be recovered. *See Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir. 2003) ("This
 15 circuit has established 25% of the common fund as a benchmark award for attorney fees."); *see*
 16 *also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). Some courts in the Ninth
 17 Circuit place this number higher, at one-third of the settlement fund. *See Beaver v. Tarsadia*
 18 *Hotels*, No. 11-CV-01842-GPC-KSC, 2017 WL 4310707, at *9 (S.D. Cal. Sept. 28, 2017).
 19 Indeed, in two recent cases, Plaintiff's counsel has sought—and obtained—33.33% of the
 20 common fund in approved class settlements. *See Vasquez v. Kraft Heinz Foods Company*, No.
 21 3:16-cv-2749-WQH-BLM, 2020 WL 1550234, at *8, *10 (S.D. Cal. Apr. 1, 2020); *Lopez v.*
 22 *Management and Training Corporation*, No. 17cv1624 JM(RBM), 2020 WL 1911571 (S.D. Cal.
 23 Apr. 20, 2020) at *8-9.

24 40. Thus, estimating attorneys' fees for the purposes of determining the amount in
 25 controversy, 25% of the above damages estimates is more than reasonable. As such, the Court
 26 should count \$3,491,913.40 toward the CAFA minimum (*i.e.*, 25% of the sum of \$5,141,718.68
 27 (meal period violations), \$5,141,718.68 (rest period violations), \$933,004.80 (waiting time
 28 penalties), and \$2,751,211.43 (wage statement violations)).

1 //

2 **6. Total Amount in Controversy**

3 41. Adding the amounts above, the total amount in controversy is at least
4 \$17,459,566.99.¹

5 42. According to United States Supreme Court guidance, a defendant’s notice of
6 removal need only include a “plausible allegation” that the amount in controversy exceeds the
7 jurisdictional threshold. *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014).
8 Evidence establishing the jurisdictional amount is only required when the plaintiff contests, or
9 the court questions, the defendant’s allegation. *Id.* Thus, the foregoing paragraphs and
10 supporting evidence exceed what is required in this notice of removal. Removal is appropriate
11 when it is more likely than not that the amount in controversy exceeds the jurisdictional
12 requirement. *See, e.g., Cohn v. PetsMart, Inc.*, 281 F.3d 837, 839–40 (9th Cir. 2002). Although
13 Defendant disputes that Plaintiff can adequately represent the purported class and denies the
14 merits of the claims, with just four of Plaintiff’s ten causes of action placing more than \$17.46
15 million in controversy, Defendant clearly meets the minimum amount required by the CAFA.

16 **V. REQUISITE NOTICE**

17 In compliance with 28 U.S.C. § 1446(d), a Notice of Filing of Removal, with a copy of
18 this Notice of Removal attached, is being filed with the Clerk of the Superior Court of the State
19 of California, County of Tulare for Case No. 282978. Defendant is serving a Notice of Filing of
20 Removal, with a copy of the Notice of Removal attached, on Plaintiff’s counsel. A Certificate of
21 Service of Notice to Adverse Party and State Court of Removal to Federal Court will also be
22 filed with this Court.

23 **VI. CONCLUSION**

24 For the reasons above, this Court has original jurisdiction over this matter, pursuant to the
25 CAFA. As such, Defendant properly removes this action to this Court.

26 //

27 _____
28 ¹ Should the Court or Plaintiff challenge the jurisdictional minimum, Defendant reserves the
right to calculate possible damages for the other six causes of action, and provide additional
evidence and argument in support of the calculations set forth in this Notice of Removal.

1 //

2 Date: July 24, 2020

SUTTON HAGUE LAW CORPORATION, P.C.

3

4

5

6 BY: _____



Attorneys for Defendants
S. BRETT SUTTON
JARED HAGUE
JONATHAN W. BLACK
Attorneys for Defendants
SAPUTO CHEESE USA, INC.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT 1



**Service of Process
Transmittal**

06/26/2020

CT Log Number 537855563

TO: Julie Hopkins, Legal Assistant
Saputo Cheese USA Inc.
1 Overlook Pt Ste 300, Lincolnshire Corporate Center
Lincolnshire, IL 60069-4327

RE: Process Served in California

FOR: Saputo Cheese USA Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Don Vasquez, individually and on behalf of all others Similarly Situated, Ptf. vs. Saputo Cheese USA Inc. and Does 1 through 25, Dfts.

DOCUMENT(S) SERVED: -

COURT/AGENCY: None Specified
Case # 282978

NATURE OF ACTION: Employee Litigation

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 06/26/2020 at 14:24

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: None Specified

ATTORNEY(S) / SENDER(S): None Specified

ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780118947108
Email Notification, Julie Hopkins JHOPKINS@SAPUTO.COM

SIGNED: C T Corporation System
ADDRESS: 208 South LaSalle Street
Suite 814
Chicago, IL 60604

For Questions: 866-331-2303
CentralTeam1@wolterskluwer.com

SUMMONS
(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

Saputo Cheese USA Inc.; and Does 1 through 25

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

Don Vasquez, individually and on behalf of all 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 o 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): Tulare County Superior Court
County Civic Center
221 South Mooney Blvd., Visalia, California 93291

CASE NUMBER:
(Número del Caso)

282978

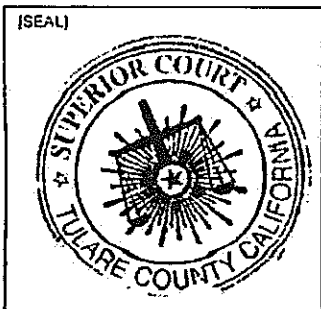
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Marta Manus, Cohelan Khoury & Singer, 605 C St., Suite 200, San Diego, California 92101; 619-595-3001

DATE: **MAY 27 2020**
(Fecha)

Stephanie Cameron Clerk, by
(Secretario)

Deputy
(Adjunto)

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



NOTICE TO THE PERSON SERVED: You are served

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

3. on behalf of (specify): **Saputo Cheese USA Inc.**

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

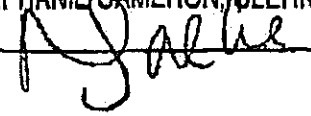
4. by personal delivery on (date):

1 **LEBE LAW, APLC**
Jonathan M. Lebe (SBN 284605)
2 jon@lebelaw.com
Zachary Gershman (SBN 328004)
3 zachary@lebelaw.com
777 S. Alameda Street, Second Floor
4 Los Angeles, CA 90021
Telephone: (213) 358-7046

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

MAY 27 2020

STEPHANIE CAMERON, CLERK

BY: 

5 **COHELAN KHOURY & SINGER**
6 Michael D. Singer (SBN 115301)
msinger@ckslaw.com
7 Marta Manus (SBN 260132)
mmanus@ckslaw.com
8 605 C Street, Suite 200
9 San Diego, CA 92101
Telephone: (619) 595-3001
10 Facsimile: (619) 595-3000

CASE MANAGEMENT CONFERENCE

Hearing Date: 9-25-2020

Time: 8:30am

Department: 2

Assigned to Judicial Officer **NATHAN D. IDE**

For All Purposes

11 Attorneys for Plaintiff Don M. Vasquez,
12 individually and on behalf of all others similarly situated

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF TULARE**

15 DON M. VASQUEZ, individually and on
16 behalf of all others similarly situated,

Case No. 282978

17 Plaintiff,

**CLASS ACTION COMPLAINT [Cal.
Code Civ. Proc. § 382]**

18 v.

19 SAPUTO CHEESE USA INC., a Delaware
20 corporation; and DOES 1 through 25,
inclusive

21 Defendants.

1. Failure to Pay Minimum Wages (Lab. Code §§1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and IWC Order 8-2001 § 4);
2. Failure to Pay Overtime Wages (Lab. Code § 510, 1194, 1198, and IWC Wage Order 8-2001 § 3);
3. Failure to Pay Reporting Time Pay (IWC Wage Order 8-2001 § 5)
4. Failure to Provide Meal Periods (Lab. Code §226.7, 512, and IWC Wage Order 8-2001 §11);
5. Failure to Provide Rest Periods (Lab. Code §226.7 and IWC Wage Order 8-2001 §12);
6. Failure to Provide Accurate Itemized Wage Statements (Lab. Code §226 and IWC Wage Order 8-2001 § 7);

ELECTRONIC FILING

CLASS ACTION COMPLAINT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. Failure to Reimburse Business Expenses (Lab. Code §2802 and IWC 8-2001 Wage Order § 9);
8. Failure to Timely Pay Wages Due During Employment (Lab. Code §§ 204, 210, and IWC Wage Order 8-2001);
9. Failure to Timely Pay Wages Due Upon Separation of Employment (Lab. Code §§201, 202, 203, and IWC Wage Order 8-2001); and
10. Violation of the Unfair Competition Law (Bus. & Prof. Code §§ 17200-17208).

JURY TRIAL DEMANDED

1 Plaintiff DON M. VASQUEZ ("Plaintiff"), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 I.

4 INTRODUCTION

5 1. Plaintiff brings this Class Action Complaint pursuant to California Code of
6 Civil Procedure section 382 against Defendants Saputo Cheese USA Inc. ("Defendant
7 Saputo"), and Does 1-25 (hereinafter collectively referred to as "Defendants"), as an
8 individual and on behalf of all other similarly-situated current and former employees of
9 Defendants for: failure to pay all minimum and overtime wages for all hours worked,
10 failure to pay reporting time pay, failure to provide off-duty meal and rest periods, failure
11 to reimburse business expenses, failure to provide accurate itemized wage statements,
12 failure to timely pay all wages due during employment, failure to timely pay all wages due
13 upon separation of employment, and restitution for unfair business practices in violation of
14 Business and Professions Code sections 17200, *et seq.*

15 2. This class action is within the Court's jurisdiction under California Labor
16 Code sections 201-203, 204, 210, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197,
17 1197.1, 1198, 2800, and 2802, California's Industrial Welfare Commission's ("IWC")
18 Wage Orders, and California's Unfair Competition Law (the "UCL"), codified at
19 California Business and Professions Code sections 17200, *et seq.*

20 3. This Complaint challenges systemic illegal employment practices resulting
21 in violations of the California Labor Code and Business and Professions Code against
22 employees of Defendants.

23 4. Plaintiff is informed and believes and based thereon alleges that Defendants
24 jointly and severally have acted intentionally and with deliberate indifference and
25 conscious disregard to the rights of all employees by failing to pay overtime and minimum
26 wages for all hours worked, failing to pay reporting time pay, failing to provide off-duty
27 meal and rest breaks, failing to reimburse all business expenses, failing to provide accurate
28 itemized wage statements, and failing to pay all wages due during and upon termination.

1 engages in unfair competition may be enjoined in any court of competent jurisdiction.
2 Business and Professions Code section 17204 provides that any person, acting on his own
3 behalf, may bring an action in a court of competent jurisdiction.

4 10. Plaintiff is informed and believes and based thereon alleges that Defendant
5 Saputo was and is a Delaware corporation doing business in the State of California
6 operating cheese processing facilities. Plaintiff is informed and believes and based thereon
7 alleges that Defendant maintains its headquarters in Illinois.

8 11. Plaintiff does not know the true names or capacities of the Defendants sued
9 herein as Does 1 through 25, inclusive, and, for that reason, said Defendants are sued under
10 such fictitious names. Plaintiff is informed and believes, and based thereon, alleges that
11 each of said fictitious Defendants are and were responsible in some manner for the injuries
12 complained of herein. Plaintiff will amend this Complaint to identify such fictitiously-
13 named Defendants pursuant to Code of Civil Procedure section 474 once their identities
14 become known.

15 12. The relief sought by Plaintiff on behalf of himself and the Plaintiff Class
16 defined below exceeds the minimal jurisdictional limits of the Superior Court and will be
17 established according to proof at trial. The Court has personal jurisdiction over each of the
18 parties because they are either citizens of this State, doing business in this State or
19 otherwise have minimum contacts with this State.

20 13. Venue is proper in this Court because, upon information and belief, Plaintiff
21 worked for Defendants in this county, Defendants transact business in this county, and acts
22 and omissions alleged herein took place in this county.

23 14. Plaintiff is informed and believes and, based thereon, alleges that
24 Defendants were at all times relevant hereto members of, and engaged in, a joint venture,
25 partnership, association or common enterprise, and acting within the course and scope of,
26 and in pursuance of, said joint venture, partnership, association or common enterprise.
27 Furthermore, Plaintiff is informed and believes and, based thereon, alleges that at all times
28 relevant hereto Defendants conspired together in, aided and abetted, contributed to, and/or

1 acted as agents or employees of each other with respect to, the commission of the acts
2 complained of herein. Defendants are therefore jointly and severally liable for the injuries
3 complained of herein.

4 III.

5 GENERAL ALLEGATIONS

6 15. California's Labor Code and IWC Wage Order 8-2001 requires employers,
7 among other things, to pay wages, including minimum and overtime wages, for all hours
8 worked, provide reporting time pay, provide compliant meal and rest periods, to furnish
9 each employee with accurate, itemized wage statements, and to reimburse employees for
10 all expenses necessarily incurred in discharge of employment.

11 16. During all, or portions of, the Class Period, Defendants maintained a
12 consistent policy of failing to pay Plaintiff and members of the Plaintiff Class for all hours
13 worked, including minimum and overtime wages, by requiring Defendants to work off-
14 the-clock during meal periods and after their shifts. Defendants employed Plaintiff and
15 members of the Plaintiff Class for more than 8 hours per day and more than 40 hours per
16 workweek, or in excess of twelve (12) hours in a day and/or in excess of eight (8) hours on
17 the seventh day of work in a work week, and failed to pay Plaintiff and members of the
18 Plaintiff Class overtime and double time compensation for the overtime and double time
19 hours Plaintiff and members of the Plaintiff Class worked. As a result, Defendants failed to
20 pay Plaintiff and members of the Plaintiff Class all their earned wages.

21 17. During all, or portions of, the Class Period, Defendants failed to pay
22 Plaintiff and members of the Plaintiff Class reporting time pay when such Plaintiff and
23 members of the Plaintiff Class would report to work on the day of their scheduled shift and
24 Defendants failed to put such Plaintiff and members of the Plaintiff Class to work or
25 furnished less than half of their usual day's work, and did not pay Plaintiff and members
26 of the Plaintiff Class reporting time pay in violation of Section 5 of IWC Wage Order 8-
27 2001.

28 18. During all, or portions of, the Class Period, Defendants failed to provide

1 Plaintiff and members of the Plaintiff Class timely, uninterrupted, off-duty meal periods of
2 no less than thirty minutes before their fifth hour of work, and failed to compensate Plaintiff
3 and members of the Plaintiff Class for these missed meal periods. Defendants required
4 Plaintiff and members of the Plaintiff Class to be "on duty" during meal periods,
5 demanding Plaintiff and members of the Plaintiff Class to keep a radio on their person or
6 otherwise be ready to immediately return to work. As a result, when Plaintiff and members
7 of the Plaintiff Class took meal periods, they were regularly interrupted, less than thirty
8 minutes, or on duty.

9 19. Defendants employed Plaintiff and members of the Plaintiff Class for work
10 periods of four hours or major fraction thereof without rest periods of ten minutes' net rest
11 time and failed to compensate Plaintiff and members of the Plaintiff Class for these missed
12 rest periods. Defendants required Plaintiff and members of the Plaintiff Class to be "on
13 duty" during rest periods, demanding Plaintiff and members of the Plaintiff Class to keep
14 a radio on their person or otherwise be ready to immediately return to work. As a result,
15 when Plaintiff and members of the Plaintiff Class took rest breaks, they were regularly
16 interrupted, less than ten minutes, or on duty.

17 20. During the Class Period, Defendants had a consistent policy of failing to
18 reimburse Plaintiff and members of the Plaintiff Class for all necessary and reasonable
19 business expenses incurred, in violation of California state wage and hour laws. Defendant
20 failed to reimburse Plaintiff and members of the Plaintiff Class for their work-related use
21 of their personal automobile incurred in the discharge of their duties for Defendants.

22 21. Defendants have intentionally and willfully failed to provide Plaintiff and
23 members of the Plaintiff Class with complete and accurate wage statements. The
24 deficiencies include, among other things, the failure to list the gross wages earned, net
25 wages earned, and all hours worked.

26 22. During all, or portions, of the Class Period, Defendants had a consistent
27 policy of failing to Plaintiff and members of the Plaintiff Class all wages due during and
28 upon termination of employment, in violation of California state wage and hour laws.

1 29. The members of the Plaintiff Class are so numerous that joinder of all
2 members in a single action would not be feasible or practical, and the amount of individual
3 damages is not large enough to make individual lawsuits by each Class Member practical
4 or feasible. Plaintiff is informed and believes, and based upon such information and belief
5 alleges, that there are in excess of 50 members of the Plaintiff Class.

6 30. Plaintiff's claims are typical of the claims of the rest of the Plaintiff Class,
7 and Plaintiff and his counsel will fairly and adequately represent the interests of the
8 Plaintiff Class.

9 31. Common issues of fact and/or law predominate in this action over any
10 allegedly individual issues. Specifically, the following common questions of fact or law
11 predominate and make this action superior to individual actions:

12 (i) whether Plaintiff and the rest of the Plaintiff Class are entitled to
13 recover damages, penalties and other relief on the grounds that Defendants have used
14 uniform policies, practices, and procedures that have consistently violated California labor
15 laws and regulations and caused Plaintiff and the rest of the Plaintiff Class to suffer the
16 same or similar injuries;

17 (ii) whether Defendants violated Labor Code sections 1182.12, 1194,
18 1194.2, 1197, 1197.1, and 1198 and section 4 of IWC Wage Order 8-2001 by failing to pay
19 minimum wage for all hours worked;

20 (iii) whether Defendants violated Labor Code sections 510, 1194, and
21 1198, and section 3 of IWC Wage Order 8-2001 by failing to pay overtime compensation;

22 (iv) whether Defendants violated section 5 of IWC Wage Order 8-2001
23 by failing to pay Reporting Time Pay;

24 (v) whether Defendants violated Labor Code sections 226.7 and 512,
25 and section 11 of IWC Wage Order 8-2001 by failing to provide meal periods for each five
26 hours worked, and not compensating employees with one hour of pay at the employees'
27 regular rate of compensation for each workday that a meal period was not provided;

28 (vi) whether Defendants violated Labor Code section 226.7 and section

1 12 of IWC Wage Order 8-2001 by failing to provide daily rest periods of ten minutes per
2 four hours or major fraction thereof worked and by failing to compensate employees one
3 hour's wages in lieu of rest periods;

4 (vii) whether Defendants violated Labor Code section 226 and section 7
5 of IWC Wage Order 8-2001 by failing to provide and maintain timely and accurate
6 itemized wage statements;

7 (viii) whether Defendants violated Labor Code sections 2800 and 2802 by
8 failing to indemnify Plaintiff and members of the Plaintiff Class for all the necessary
9 expenditures or losses incurred in direct consequence of the discharge of their duties, or of
10 their obedience to the directions of their employer;

11 (ix) whether Defendants violated Labor Code sections 204 and 210, and
12 sections 3 and 4 of IWC Wage Order 8-2001 by failing to pay wages for all hours worked;

13 (x) whether Defendants violated Labor Code sections 201-203 by
14 failing to timely pay Plaintiff and Waiting Time Subclass Members all wages due upon
15 termination or within seventy-two (72) of resignation; and

16 (xi) whether Defendants' practices constitute unfair, fraudulent, or
17 illegal business practices under Business and Professions Code sections 17200, *et seq.*

18 32. California labor laws under which Plaintiff asserts the following causes of
19 action on behalf of himself and the rest of the Plaintiff Class are broadly remedial in nature.
20 These labor laws serve an important public interest in establishing minimum working
21 conditions and standards in California. They furthermore protect employees from
22 exploitation by employers who may seek to take advantage of their superior economic and
23 bargaining power in setting onerous terms and conditions of employment. The class action
24 mechanism is a particularly efficient and appropriate procedure to redress the injuries
25 alleged herein. If each employee in the Plaintiff Class was required to file an individual
26 action, Defendants would be able to use their superior financial and legal resources to gain
27 an unfair advantage over each individual Plaintiff Class Member. Moreover, requiring each
28 Plaintiff Class Member to pursue an individual action would also discourage the assertion

1 of meritorious causes of action by employees who would likely be disinclined to file such
2 individual actions due to a justifiable fear of retaliation and damage to their careers at
3 subsequent employment.

4 33. In addition, even if feasible, individual actions by each Plaintiff Class
5 Member would create a substantial risk (i) of inconsistent or varying adjudications with
6 respect to the claims of each class member against Defendants, that in turn could establish
7 potentially incompatible standards of conduct for Defendants, and/or (ii) of adjudications
8 with respect to individual Plaintiff and members of the Plaintiff Class that would, as a
9 practical matter, be dispositive of the interests of the other Plaintiff and members of the
10 Plaintiff Class. Furthermore, the claims of each individual Plaintiff Class Member are not
11 sufficiently large enough to make it economically feasible to bring each Plaintiff Class
12 Member's claims on an individual basis.

13 V.

14 CAUSES OF ACTION

15 FIRST CAUSE OF ACTION

16 FAILURE TO PAY MINIMUM WAGES

17 (Violation of Cal. Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1,
18 and 1198, and IWC Wage Order 8-2001, § 4)

19 34. Plaintiff re-alleges and incorporates herein by this reference each and every
20 allegation set forth in all previous paragraphs of the Complaint.

21 35. Labor Code section 1194(a) states: "Notwithstanding any agreement to
22 work for a lesser wage, any employee receiving less than the legal minimum wage or the
23 legal overtime compensation applicable to the employee is entitled to recover in a civil
24 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."

26 36. Labor Code section 1194.2 states: "In any action under Section 98, 1193.6,
27 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum
28 wage fixed by an order of the commission or by statute, an employee shall be entitled to
recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest

1 thereon.”

2 37. Labor Code section 1194.2 provides for liquidated damages equal to
3 unlawfully unpaid minimum wages, with interest.

4 38. Labor Code section 1197 states: “The minimum wage for employees fixed
5 by the commission is the minimum wage to be paid to employees, and the payment of a
6 less wage than minimum wage so fixed is unlawful.”

7 39. Labor Code section 1197.1 states: “Any employer or other person acting
8 either individually or as an officer, agent, or employee of another person, who pays or
9 causes to be paid to any employee a wage less than the minimum fixed by an order of the
10 commission shall be subject to a civil penalty, restitution of wages, liquidated damages
11 payable to the employee, and any applicable penalties imposed pursuant to Section 203.
12 For any initial violation that is intentionally committed, one hundred dollars (\$100) for
13 each underpaid employee for each pay period for which the employee is underpaid. For
14 each subsequent violation for the same specific offense, two hundred fifty dollars (\$250)
15 for each underpaid employee for each pay period for which the employee is underpaid
16 regardless of whether the initial violation is intentionally committed.”

17 40. Labor Code section 1198 states: “The maximum hours of work and the
18 standard conditions of labor fixed by the commission shall be the maximum hours of work
19 and the standard conditions of labor for employees. The employment of any employee for
20 longer hours than those fixed by the order or under conditions of labor prohibited by the
21 order is unlawful.”

22 41. Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections
23 of the applicable Wage Order, an employer may not pay employees less than the applicable
24 minimum wage for all hours worked, and provides that an employer may not pay non-
25 exempt employees less than the applicable overtime rate for all overtime hours worked.

26 42. During the relevant time period, Defendants regularly failed to pay at least
27 minimum wage to Plaintiff and members of the Plaintiff Class for all hours worked
28 pursuant to Labor Code sections 1194 and 1197.

1 43. Defendants' failure to pay Plaintiff and members of the Plaintiff Class the
2 minimum wage as required violates Labor Code sections 1194 and 1197.

3 44. As a direct result, Plaintiff and members of the Plaintiff Class have suffered
4 and continue to suffer, substantial losses related to the use and enjoyment of such wages,
5 including lost interest on such monies and expenses and attorney's fees in seeking to
6 compel Defendants to fully perform their obligation under state law, all to their respective
7 damage in amounts according to proof at trial and within the jurisdictional limitations of
8 this Court.

9 45. Defendants' unlawful acts deprived Plaintiff and members of the Plaintiff
10 Class Plaintiff seeks to represent of minimum wages in amounts to be determined at trial,
11 and they are entitled to recover these amounts, along with liquidated damages for unpaid
12 regular or minimum wages, interest, attorneys' fees, and costs.

13 46. Plaintiff seeks to recover in a civil action the unpaid balance of the full
14 amount of the unpaid wages resulting from Defendants' minimum wage violations
15 including interest thereon, reasonable attorney's fees and costs of suit, penalties, and
16 liquidated damages to the fullest extent permissible including those permitted pursuant to
17 Labor Code sections 218.6, 1194, 1194.2, and 1197.1, and Code of Civil Procedure section
18 1021.5.

19 47. Plaintiff, on behalf of himself and the members of the Plaintiff Class,
20 requests relief as described below.

21 **SECOND CAUSE OF ACTION**
22 **FAILURE TO PAY OVERTIME COMPENSATION**
23 **(Violation of Cal. Labor Code §§ 510, 1194, and 1198, and IWC Wage Order 8-**
24 **2001, § 3)**

25 48. Plaintiff re-alleges and incorporates herein by this reference each and every
26 allegation set forth in all previous paragraphs of the Complaint.

27 49. Labor Code section 1198 and the IWC Wage Order 8-2001 provide that it
28 is unlawful to employ persons without compensating them at a rate of pay either one and
one-half (1½) or two (2) times the person's regular rate of pay, depending on the number

1 of hours or days worked by the person on a daily or weekly basis.

2 50. Specifically, section 3 of IWC Wage Order 8-2001 provides that
3 Defendants are and were required to pay overtime compensation to Plaintiff and members
4 of the Plaintiff Class at the rate of one and one-half times (1½) their regular rate of pay
5 when working and for all hours worked in excess of eight (8) hours in a day or more than
6 forty (40) hours in a workweek and for the first eight (8) hours of work on the seventh day
7 of work in a workweek.

8 51. Section 4 of IWC Wage Order 8-2001 further provide that Defendants are
9 and were required to pay overtime compensation to Plaintiff and members of the Plaintiff
10 Class at a rate of two times their regular rate of pay when working and for all hours worked
11 in excess of twelve (12) hours in a day or in excess of eight (8) hours on the seventh day
12 of work in a workweek.

13 52. Labor Code section 510 codifies the right to overtime compensation at one
14 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8)
15 hours in a day or forty (40) hours in a week and for the first eight (8) hours worked on the
16 seventh consecutive day of work, and overtime compensation at twice the regular hourly
17 rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
18 in a day on the seventh day of work in a workweek.

19 53. Labor Code section 510 and IWC Wage Order 8-2001 provide that
20 employment of more than six days in a workweek is only permissible if the employer pays
21 proper overtime compensation as set forth herein.

22 54. During the relevant time period, Defendants failed to pay Plaintiff and
23 members of the Plaintiff Class overtime wages for all overtime hours worked when
24 Plaintiff and members of the Plaintiff Class worked in excess of eight (8) hours in a day,
25 forty (40) hours in a week and/or for a seventh consecutive day of work in a workweek, or
26 when Plaintiff and members of the Plaintiff Class worked in excess of twelve (12) hours in
27 a day and/or in excess of eight (8) hours on the seventh day of work in a work week.

28 55. In violation of state law, Defendants knowingly and willfully refused to

1 perform their obligations and compensate Plaintiff and members of the Plaintiff Class for
2 all wages earned and all hours worked.

3 56. Defendants' failure to pay Plaintiff and members of the Plaintiff Class the
4 unpaid balance of overtime and double time compensation, as required by California law,
5 violates the provisions of Labor Code sections 510 and 1198, and is therefore unlawful.

6 57. As a direct result, Plaintiff and members of the Plaintiff Class have suffered
7 and continue to suffer, substantial losses related to the use and enjoyment of such wages,
8 including lost interest on such monies and expenses and attorney's fees in seeking to
9 compel Defendants to fully perform their obligation under state law, all to their respective
10 damage in amounts according to proof at trial and within the jurisdictional limitations of
11 this Court.

12 58. Defendants' unlawful acts deprived Plaintiff and members of the Plaintiff
13 Class Plaintiff seeks to represent of minimum and/or overtime wages in amounts to be
14 determined at trial, and they are entitled to recover these amounts, along with liquidated
15 damages for unpaid regular or minimum wages, interest, attorneys' fees, and costs.

16 59. Pursuant to Labor Code section 1194, Plaintiff and members of the Plaintiff
17 Class are entitled to recover their unpaid overtime and double time compensation as well
18 as interest, costs, and attorneys' fees.

19 60. Plaintiff, on behalf of himself and members of the Plaintiff Class, requests
20 relief as described below.

21 **THIRD CAUSE OF ACTION**
22 **FOR FAILURE TO PAY REPORTING TIME PAY**
23 **(Violation of IWC Wage Order 8-2001, § 5)**

24 61. Plaintiff re-alleges and incorporate herein by this reference each and every
25 allegation set forth in all previous paragraphs of the Complaint.

26 62. Section 5 of IWC Wage Order 8-2001 requires that on each workday that
27 an employee reports for work as scheduled but is not put to work or is furnished less than
28 half of the employee's usual or scheduled day's work, the employee shall be paid for half
the usual or scheduled day's work, but in no event for less than two (2) hours nor more

1 than four (4) hours at the employee's regular rate of pay, which shall not be less than the
2 minimum wage. Section 5 of the applicable Wage Order denominates this as "Reporting
3 Time Pay."

4 63. During the Class Period, Plaintiff and members of the Plaintiff Class were
5 required to report to work but were not put to work and would be sent home early.
6 Accordingly, for those times that Plaintiff and members of the Plaintiff Class were required
7 to report to work but were not put to work or were furnished with less than half of their
8 usual scheduled day's work, Plaintiff and members of the Plaintiff Class are entitled to
9 recover from Defendants compensation for half a day's work, plus interest thereon,
10 together with their reasonable attorneys' fees and costs.

11 64. Plaintiff, on behalf of himself and members of the Plaintiff Class, requests
12 relief as described below.

13 **FOURTH CAUSE OF ACTION**
14 **FAILURE TO PROVIDE MEAL PERIODS**
15 **(Violation of Cal. Labor Code §§ 226.7 and 512, and IWC Wage Order**
16 **8-2001, § 11)**

17 65. Plaintiff re-alleges and incorporates herein by this reference each and every
18 allegation set forth in all previous paragraphs of the Complaint.

19 66. Labor Code section 226.7 provides that no employer shall require an
20 employee to work during any meal period mandated by the IWC Wage Orders.

21 67. Section 11 of IWC Wage Order 8-2001 states, "[n]o employer shall employ
22 any person for a work period of more than five (5) hours without a meal period of not less
23 than 30 minutes, except that when a work period of not more than six (6) hours will
24 complete the day's work the meal period may be waived by mutual consent of the employer
25 and the employee."

26 68. Labor Code section 512(a) provides that an employer may not require,
27 cause, or permit an employee to work for a period of more than five (5) hours per day
28 without providing the employee with an uninterrupted meal period of not less than thirty
(30) minutes, except that if the total work period per day of the employee is not more than

1 six (6) hours, the meal period may be waived by mutual consent of both the employer and
2 the employee.

3 69. Labor Code section 512(a) also provides that an employer may not employ
4 an employee for a work period of more than ten (10) hours per day without providing the
5 employee with a second meal period of not less than thirty (30) minutes, except that if the
6 total hours worked is no more than twelve (12) hours, the second meal period may be
7 waived by mutual consent of the employer and the employee only if the first meal period
8 was not waived.

9 70. During the relevant time period, Plaintiff and members of the Plaintiff Class
10 did not receive compliant meal periods for working more than five (5) and/or ten (10) hours
11 per day. Furthermore, Defendants failed to inform Plaintiff and members of the Plaintiff
12 Class of their right to meal periods and failed to record meal periods in compliance with
13 California law.

14 71. Labor Code section 226.7(b) and section 11 of IWC Wage Order 8-2001
15 requires an employer to pay an employee one (1) additional hour of pay at the employee's
16 regular rate of compensation for each workday that a compliant meal period is not
17 provided.

18 72. At all relevant times, Defendants failed to pay Plaintiff and members of the
19 Plaintiff Class meal period premiums for their missed meal periods pursuant to Labor Code
20 section 226.7(b) and section 11 of IWC Wage Order 8-2001.

21 73. As a result of Defendants' failure to pay Plaintiff and members of the
22 Plaintiff Class an additional hour of pay for each day a compliant meal period was not
23 provided, Plaintiff and members of the Plaintiff Class suffered and continue to suffer a loss
24 of wages and compensation. Because Defendants failed to provide meal periods, they are
25 liable to Plaintiff and members of the Plaintiff Class for one hour of additional premium
26 pay at the regular rate of compensation for each workday that the meal periods were not
27 provided, pursuant to Labor Code section 226.7 and IWC Wage Order 8-2001, section
28 11(B).

1 employee to work during any rest period mandated by the IWC Wage Orders.

2 81. Section 12 of IWC Wage Order 8-2001 states "every employer shall
3 authorize and permit all employees to take rest periods, which insofar as practicable shall
4 be in the middle of each work period" and the "authorized rest period time shall be based
5 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
6 hours or major fraction thereof" unless the total daily work time is less than three and one-
7 half (3½) hours.

8 82. IWC Wage Order 8-2001, section 12(B) states that if an employer fails to
9 provide an employee a rest period in accordance with the applicable provisions of this
10 Order, the employer shall pay the employee one (1) hour of pay at the employee's regular
11 rate of compensation for each work day that the rest period is not provided.

12 83. Labor Code section 226.7(d) provides that a rest period mandated by state
13 law or IWC Wage Order "shall be counted as hours worked, for which there shall be no
14 deduction from wages."

15 84. During the relevant time period, Plaintiff and members of the Plaintiff Class
16 did not receive a ten (10) minute net rest period for every four (4) hours or major fraction
17 thereof worked.

18 85. Labor Code section 226.7(b) and section 12 of IWC Wage Order 8-2001
19 requires an employer to pay an employee one additional hour of pay at the employee's
20 regular rate of compensation for each workday that the rest period is not provided.

21 86. At all relevant times, Defendants failed to pay Plaintiff and members of the
22 Plaintiff Class the full rest period premium for missed or interrupted rest periods pursuant
23 to Labor Code section 226.7(b) and section 12 of IWC Wage Order 8-2001.

24 87. As a direct result of Defendants' violations alleged herein, Plaintiff and
25 members of the Plaintiff Class have suffered and continue to suffer substantial losses
26 related to the use and enjoyment of such wages, including lost interest on such monies and
27 expenses and attorney's fees in seeking to compel Defendants to fully perform their
28 obligation under state law, all to their respective damage in amounts according to proof at

1 trial and within the jurisdictional limitations of this Court.

2 88. Defendants' unlawful acts deprived Plaintiff and members of the Plaintiff
3 Class Plaintiff seeks to represent of premium wages and/or other compensation in amounts
4 to be determined at trial, and they are entitled to recover such amounts, plus interest,
5 attorneys' fees, and costs.

6 89. Plaintiff seeks to recover in a civil action the unpaid balance of the full
7 amount of the unpaid wages resulting from Defendants' rest period violations including
8 interest thereon, reasonable attorney's fees and costs of suit, and penalties to the fullest
9 extent permissible including those permitted pursuant to Labor Code section 226.7 and
10 Code of Civil Procedure section 1021.5.

11 90. Plaintiff, on behalf of himself and members of the Plaintiff Class requests
12 relief as described below.

13 **SIXTH CAUSE OF ACTION**
14 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
15 **(Violation of Cal. Labor Code § 226, and IWC Wage Order 8-2001, § 7)**

16 91. Plaintiff re-alleges and incorporates herein by this reference each and every
17 allegation set forth in all previous paragraphs of the Complaint.

18 92. Labor Code section 226(a) states in pertinent part: "Every employer shall,
19 semimonthly or at the time of each payment of wages, furnish each of his or her employees,
20 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
21 separately when wages are paid by personal check or cash, an accurate itemized statement
22 in writing showing": (1) gross wages earned; (2) total hours worked by the employee,
23 except for any employee whose compensation is solely based on a salary and who is exempt
24 from payment of overtime under subdivision (a) of Section 515 or any applicable order of
25 the Industrial Welfare Commission; (3) the number of piece-rate units earned and any
26 applicable piece rate if the employee is paid on a piece-rate basis; (4) All deductions,
27 provided that all deductions made on written orders of the employee may be aggregated
28 and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which
the employee is paid; (7) the name of the employee and only the last four digits of his or

1 her social security number or an employee identification number other than a social
2 security number; (8) the name and address of the legal entity that is the employer; and (9)
3 all applicable hourly rates in effect during the pay period and the corresponding number of
4 hours worked at each hourly rate by the employee. The deductions made from payment of
5 wages shall be recorded in ink or other indelible form, properly dated, showing the month,
6 day, and year, and a copy of the statement and the record of the deductions shall be kept
7 on file by the employer for at least three years at the place of employment or at a central
8 location within the State of California.”

9 93. IWC Wage Order 8-2001, section 7(A) states in relevant part that the
10 employer shall keep accurate information regarding, “(4) Total wages paid each payroll
11 period, including value of board, lodging, or other compensation actually furnished to the
12 employee; (5) Total hours worked in the payroll period and applicable rates of pay.”

13 94. Defendants have intentionally and willfully failed to provide Plaintiff and
14 members of the Wage Statement Subclass with complete and accurate wage statements.
15 The deficiencies include, among other things, the failure to list the gross wages earned, net
16 wages earned, and all hours worked.

17 95. As a result of Defendants’ violation of California Labor Code section
18 226(a), Plaintiff and members of the Wage Statement Subclass have suffered injury and
19 damage to their statutorily protected rights. Specifically, Plaintiff and members of the
20 Wage Statement Subclass have been injured by Defendants’ intentional violation of
21 California Labor Code section 226(a) because they were denied both their legal right to
22 receive, and their protected interest in receiving, accurate itemized wage statements under
23 California Labor Code section 226(a). In addition, because Defendants failed to provide
24 the accurate rates of pay on wage statements, Defendants have prevented Plaintiff and
25 members of the Wage Statement Subclass from determining if all hours worked were paid
26 at the appropriate rate and the extent of the underpayment. Plaintiff has had to file this
27 lawsuit in order to analyze whether in fact Plaintiff was paid correctly and the extent of the
28 underpayment, thereby causing Plaintiff to incur expenses and lost time. Plaintiff would

1 not have had to engage in these efforts and incur these costs had Defendants provided the
2 accurate rate of pay. This has also delayed Plaintiff's ability to demand and recover the
3 underpayment of wages from Defendants.

4 96. Labor Code section 226(e) states: "An employee suffering injury as a result
5 of a knowing and intentional failure by an employer to comply with subdivision (a) is
6 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
7 period in which a violation occurs and one hundred dollars (\$100) per employee for each
8 violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand
9 dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees."

10 97. Labor Code section 226(e)(2)(B) states: "An employee is deemed to suffer
11 injury for purposes of this subdivision if the employer fails to provide accurate and
12 complete information as required by any one or more of items (1) to (9), inclusive, of
13 subdivision (a) and the employee cannot promptly and easily determine from the wage
14 statement alone one or more of the following: (i) The amount of gross wages or net wages
15 paid to the employee during the pay period or any other information required to be provided
16 on the itemized wage statement pursuant to items (2) to (4), inclusive, (6) and (9) of
17 subdivision (a)..." Because Plaintiff's wage statements did not include, among other
18 things, an accurate accounting of gross wages earned or the accurate total hours worked,
19 he is deemed to have suffered injury.

20 98. Defendants' violations of California Labor Code section 226(a) prevented
21 Plaintiff and members of the Wage Statement Subclass from knowing, understanding, and
22 disputing the wages paid to them, and resulted in an unjustified economic enrichment to
23 Defendants. As a result of Defendants' knowing and intentional failure to comply with
24 California Labor Code section 226(a), Plaintiff and members of the Wage Statement
25 Subclass have suffered an injury, the exact amount of damages and/or penalties is all in an
26 amount to be shown according to proof at trial.

27 99. Labor Code section 226(h) states: "An employee may also bring an action
28 for injunctive relief to ensure compliance with this section, and is entitled to an award of

1 costs and reasonable attorney's fees."

2 100. Labor Code section 226.3 states, in part: "Any employer who violates
3 subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two
4 hundred fifty dollars (\$250) per employee per violation in an internal citation and one
5 thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for
6 which the employer fails to keep the records required in subdivision (a) of Section 226.
7 The civil penalties provided for in this section are in addition to any other penalty provided
8 by law."

9 101. As a direct result of Defendants' violations alleged herein, Plaintiff and
10 members of the Wage Statement Subclass have suffered, and continue to suffer, injury
11 including substantial losses related to the use and enjoyment of such wages, lost interest
12 on such monies and expenses and attorney's fees in seeking to compel Defendants to fully
13 perform their obligations under state law, all to their respective damage in amounts
14 according to proof at trial and within the jurisdictional limitations of this Court.

15 102. Plaintiff seeks to recover in a civil action all remedies including damages,
16 unpaid wages, penalties, attorney's fees and costs, and injunctive relief to the fullest extent
17 permissible including those permitted pursuant to Labor Code sections 226(e) and (h), and
18 226.3, and Code of Civil Procedure section 1021.5.

19 103. Plaintiff, on behalf of himself and the members of the Wage Statement
20 Subclass, requests relief as described below.

21 **SEVENTH CAUSE OF ACTION**
22 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
23 **(Violation of Cal. Labor Code §§ 2800 and 2802)**

24 104. Plaintiff re-alleges and incorporates by this reference each and every
25 allegation set forth in all previous paragraphs of the Complaint.

26 105. Labor Code section 2800 provides, in pertinent part, "[a]n employer shall
27 in all cases indemnify his employee for losses caused by the employer's want of ordinary
28 care."

106. Labor Code section 2802 provides, in pertinent part, "[a]n employer shall

1 indemnify his or her employee for all necessary expenditures or losses incurred by the
2 employee in direct consequence of the discharge of his or her duties...”

3 107. Further, Labor Code section 2802 additionally provides, in pertinent part:
4 “(c)...the term ‘necessary expenditures or losses’ shall include all reasonable costs,
5 including but not limited to, attorney’s fees incurred by the employee enforcing the rights
6 granted by this section.”

7 108. California Labor Code section 2804 mandates that this statutory right
8 cannot be waived.

9 109. During the relevant time period, Defendants were required to indemnify and
10 reimburse Plaintiff and members of the Plaintiff Class for all expenditures or losses caused
11 by the employer’s want of ordinary care and/or incurred in direct consequent of the
12 discharge of their duties, but failed to indemnify and reimburse Plaintiff and members of
13 the Plaintiff Class. For example, Plaintiff and members of the Plaintiff Class were required
14 to use their personal vehicle for business-related purposes, in violation of Labor Codes
15 sections 2800 and 2802.

16 110. As a direct and proximate result, Plaintiff and members of the Plaintiff Class
17 have suffered, and continue to suffer, substantial losses, related to the use and enjoyment
18 of such monies to be reimbursed, lost interest on such monies, and expenses and attorney’s
19 fees in seeking to compel Defendants to fully perform their obligations under California
20 law, all to their damage in amounts according to proof at the time of trial.

21 111. Accordingly, Plaintiff and members of the Plaintiff Class are entitled to
22 recover, and hereby seek, an amount equal to incurred necessary expenditures, pre- and
23 post-judgment interest, applicable penalties, attorneys’ fees and costs, and any further
24 equitable relief this Court may deem just and proper. See Cal. Lab. Code § 2802; see also,
25 Cal. Civ. Proc. Code § 1021.5.

26 112. Plaintiff, on behalf of himself and members of the Plaintiff Class, requests
27 relief as described below.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EIGHTH CAUSE OF ACTION
FAILURE TO TIMELY PAY WAGES DUE DURING EMPLOYMENT
(Violation of Cal. Labor Code §§ 204 and 210, and IWC Wage Order 8-2001)

113. Plaintiff re-alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of the Complaint.

114. Labor Code section 204 provides that all wages earned by an employee are due and payable twice during each calendar month.

115. Defendants failed to timely pay Plaintiff and members of the Plaintiff Class all of their earned wages as required by Labor Code section 204.

116. Plaintiff and members of the Plaintiff Class have been deprived of their rightfully earned wages as a direct and proximate result of Defendants' failure to pay said compensation. Plaintiff and members of the Plaintiff Class are entitled to recover such amounts, plus interest thereon, attorney's fees and costs.

117. In addition, Plaintiff and members of the Plaintiff Class are entitled to penalties pursuant to Labor Code section 210 as follows: (1) for Defendants' initial violation, \$100 for each failure to pay each Plaintiff Class Member; and (2) for each of Defendants' subsequent violations, or any willful or intentional violation, \$200 for each failure to pay each Plaintiff Class Member, plus 25 percent of the amount unlawfully held.

118. Plaintiff, on behalf of himself and members of the Plaintiff Class, requests relief as described below.

NINTH CAUSE OF ACTION
FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT
(Violation of Cal. Labor Code §§ 201, 202, and 203, and IWC Wage Order 8-2001)

119. Plaintiff re-alleges and incorporates by this reference each and every allegation set forth in all previous paragraphs of the Complaint.

120. California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his employment, his wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the

1 employee has given seventy-two (72) hours previous notice of his intention to quit, in
2 which case the employee is entitled to his wages at the time of quitting.

3 121. During the relevant time period, Defendants willfully failed to pay Plaintiff
4 and Waiting Time Subclass members all their earned wages upon termination including,
5 but not limited to, proper minimum wages and overtime and double-time compensation,
6 either at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
7 employ.

8 122. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all
9 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
10 Defendants' employ is in violation of Labor Code sections 201 and 202.

11 123. California Labor Code section 203 provides that if an employer willfully
12 fails to pay wages owed immediately upon discharge or resignation in accordance with
13 Labor Code sections 201 and 202, then the wages of the employee shall continue as a
14 penalty from the due date at the same rate until paid or until an action is commenced; but
15 the wages shall not continue for more than thirty (30) days.

16 124. Plaintiff and Waiting Time Subclass Members are entitled to recover from
17 Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass
18 members' regular daily wages for each day they were not paid, at their regular hourly rate
19 of pay, up to a thirty (30) day maximum pursuant to Labor Code section 203.

20 125. Plaintiff, on behalf of himself and members of the Waiting Time Subclass,
21 requests relief as described below.

22 **TENTH CAUSE OF ACTION**
23 **VIOLATION OF THE UNFAIR COMPETITION LAW**
24 **(Business and Professions Code §§ 17200-17208)**

25 126. Plaintiff re-alleges and incorporates herein by this reference each and every
26 allegation set forth in all previous paragraphs of the Complaint.

27 127. California Business and Professions Code sections 17200, *et seq.*, prohibits
28 acts of unfair competition, which includes any "unlawful, unfair or fraudulent business act
or practice"

1 128. A violation of California Business and Professions Code sections 17200, *et*
2 *seq.* may be predicated on the violation of any state or federal law. In the instant case,
3 Defendants' policies and practices have violated state law causing Plaintiff and Plaintiff
4 Class Members to suffer and continue to suffer injuries in fact. As alleged herein,
5 Defendants systematically engaged in unlawful conduct in violation of the California Labor
6 Code and IWC Wage Orders, such as failing to timely pay all earned wages, minimum
7 wages, failing to pay overtime wages, failing to pay reporting time pay, failing to authorize
8 or permit paid rest breaks, failing to provide meal periods, failing to furnish accurate
9 itemized wage statements, failing to reimburse business expenses, and failing to timely pay
10 final wages due during and upon separation of employment, all in order to decrease their
11 costs of doing business and increase their profits.

12 129. This cause of action is brought under Business and Professions Code
13 sections 17203 and 17204, commonly called the Unfair Competition Law. Under this cause
14 of action and pursuant to Business and Professions Code section 17208, Plaintiff and all
15 Plaintiff Class Members seek restitution of wages owed and, where applicable, penalties
16 under Labor Code section 203, where such wages were due each of the Plaintiff Class
17 Members during the Class Period, commencing four (4) years prior to filing of this
18 complaint, according to proof.

19 130. This cause of action is brought as a cumulative remedy as provided in
20 Business and Professions Code section 17205, and is intended as an alternative remedy for
21 restitution for Plaintiff and each Plaintiff Class Member, for the time period, or any portion
22 thereof, commencing within four (4) years prior to the filing of this complaint, and as the
23 primary remedy for Plaintiff, each Plaintiff Class Member, and each member of the
24 Plaintiff Class for the time period of the fourth year prior to the filing of this complaint, as
25 such one-year time period exceeds the statute of limitations on statutory wage claims.

26 131. At all times relevant herein, Defendants intentionally avoided paying
27 Plaintiff and members of the Plaintiff Class wages and monies, thereby creating for
28 Defendants an artificially lower cost of doing business in order to undercut their

1 competitors and establish and/or gain a greater foothold in the marketplace.

2 132. At the time Plaintiff and members of the Plaintiff Class were hired,
3 Defendants knowingly, intentionally and wrongfully misrepresented to each of them their
4 conformance with the California Labor Code and IWC Wage Orders including proper
5 payments required by law.

6 133. At all relevant times herein, Defendants held themselves out to Plaintiff and
7 members of the Plaintiff Class as being knowledgeable concerning the labor laws of
8 California.

9 134. At all times relevant herein, Plaintiff and members of the Plaintiff Class
10 relied on and believed Defendants' representations concerning their conformance with
11 California's wage and hour laws all to their detriment.

12 135. As a result of Defendants' intentional, willful, purposeful, and wrongful
13 misrepresentation of their conformance with the California Labor Code and IWC Wage
14 Orders, Plaintiff and members of the Plaintiff Class suffered a loss of wages and monies,
15 all in an amount to be shown according to proof at trial. By violating the foregoing statutes
16 and regulations as herein alleged, Defendants' acts constitute unfair and unlawful business
17 practices under California Business and Professions Code sections 17200, *et seq.*

18 136. Defendants' violations of the California Labor Code and IWC Wage Orders
19 and their scheme to lower their payroll costs as alleged herein, constitute unlawful business
20 practices because they were done in a systematic manner over a period of time to the
21 detriment of the Plaintiff and members of the Plaintiff Class.

22 137. As a result of the unfair business practices of Defendants, as alleged herein,
23 Plaintiff and members of the Plaintiff Class are entitled to injunctive relief, disgorgement
24 and restitution in an amount to be shown according to proof at trial.

25 138. Plaintiff and members of the Plaintiff Class seek to enforce important rights
26 affecting the public interest within the meaning of California Code of Civil Procedure
27 section 1021.5. Defendants' conduct, as alleged herein, has been, and continues to be,
28 unfair, unlawful, and harmful to members of the Plaintiff Class and to the general public.

1 Based on Defendants' conduct as alleged herein, Plaintiff and members of the Plaintiff
2 Class are entitled to an award of attorneys' fees pursuant to California Code of Civil
3 Procedure section 1021.5.

4 139. Plaintiff, on behalf of himself and members of the Plaintiff Class, requests
5 relief as described below.

6 VI.

7 PRAYER

8 Plaintiff prays for judgment as follows:

9 1. That the Court determine this action may be maintained as a class action
10 and Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;

11 2. For injunctive relief as provided by the Labor Code to the extent permitted
12 by law including, but not limited to, pursuant to Section 226(h), and Business and
13 Professions Code sections 17200, *et seq.*;

14 3. For restitution as provided by Business and Professions Code sections
15 17200, *et seq.*;

16 4. For an order requiring Defendants to restore and disgorge all funds to each
17 affected person acquired by means of any act or practice declared by this Court to be
18 unlawful, unfair or fraudulent and, therefore, constituting unfair competition under
19 Business and Professions Code sections 17200, *et seq.*;

20 5. For an award of unpaid wages, including minimum wages, overtime wages,
21 and reporting time pay to the extent permissible by law to each affected person;

22 6. For an award of liquidated damages to the extent permissible by Labor Code
23 section 1194.2;

24 7. For an award of meal period premium wages equal to one hour of pay at the
25 employee's regular rate of pay for each workday that a meal period was not provided in
26 accordance with Labor Code sections 226.7 and 512, and Section 11 of the applicable IWC
27 Wage Order;

28 8. For an award of rest period premium wages equal to one hour of pay at the

1 employee's regular rate of pay for each workday that a rest period was not provided in
2 accordance with Labor Code section 226.7 and Section 12 of the applicable IWC Wage
3 Order;

4 9. For reimbursement of unpaid expenses incurred as a result of the use of
5 personal vehicles at the direction of and for the benefit of Defendants, in accordance with
6 Labor Code section 2802;

7 10. For penalties to the extent permitted pursuant to the Labor Code, and Orders
8 of the Industrial Welfare Commission including, but not limited to penalties under Labor
9 Code section 226(e);

10 11. For an award of waiting time penalties per former employee pursuant to
11 Labor Code section 203(a);

12 12. For an award of penalties incurred under sections 210, 226.3, 226(e), and
13 1174.5 per underpaid employee pursuant to Labor Code sections 210, 226(e), 226.3, and
14 1174.5;

15 13. For an award of liquidated damages to the extent permissible by Labor Code
16 section 1194.2;

17 14. For penalties incurred under Labor Code section 1197.1 for each underpaid
18 employee per pay period for which the employee was underpaid;

19 15. For pre- and post-judgment interest to the extent permitted by law including,
20 but not limited to, Labor Code sections 218.6 and 1194;

21 16. Determine the appropriate remedy to compensate Plaintiff, Plaintiff Class,
22 and Subclass members, as required to promote fairness and justice, including but not
23 limited to establishing procedures for compensation, and fluid recovery if appropriate.

24 LEBE LAW, APLC
25 COHELAN KHOURY & SINGER

26 Dated: May 27, 2020

27 By: 

Jonathan M. Lebe, Esq.

Michael D. Singer, Esq.

Marta Manus, Esq.

28 Attorney for Plaintiff Don M. Vasquez, individually

1 and on behalf of all others similarly situated

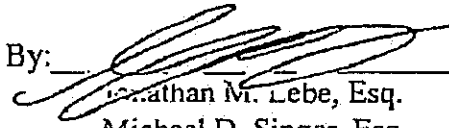
2 DEMAND FOR JURY TRIAL

3 Plaintiff demands a trial by jury on all claims so triable.

4 LEBE LAW, APLC
5 COHELAN KHOURY & SINGER

6 Dated: May 27, 2020

7 By: _____



Jonathan M. Lebe, Esq.

Michael D. Singer, Esq.

Marta Manus, Esq.

8 Attorney for Plaintiff Don M. Vasquez, individually
9 and on behalf of all others similarly situated

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Marta Manus, Case SBN 2019-1029-DAD-JDP Document 1 Filed 07/24/20 Page 46 of 69
COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101
TELEPHONE NO.: 619-595-3001 FAX NO.: 619-595-3000
ATTORNEY FOR (Name): Plaintiff Don Vasquez

FOR COURT USE ONLY
FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION
MAY 27 2020
STEPHANIE CAMERON, CLERK
BY: *[Signature]*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Tulare
STREET ADDRESS: 221 South Mooney Blvd.
MAILING ADDRESS: 221 South Mooney Blvd.
CITY AND ZIP CODE: Visalia, 93291
BRANCH NAME: County Civic Center

CASE NAME:
Vasquez v. Saputo Cheese USA Inc., et al.

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
282978
JUDGE:
DEPT:

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

1. Check one box below for the case type that best describes this case:
- | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PII/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PII/PD/WD (23)
Non-PII/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PII/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input checked="" type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Ten (10)
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 27, 2020
Marta Manus, Esq.
(TYPE OR PRINT NAME)

[Signature]
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

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

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

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

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

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

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	Construction Defect (10)
	Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)	Claims Involving Mass Tort (40)
	Negligent Breach of Contract/Warranty	Securities Litigation (28)
Other PII/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Other Breach of Contract/Warranty	Environmental/Toxic Tort (30)
Asbestos (04)	Collections (e.g., money owed, open book accounts) (09)	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Asbestos Property Damage	Collection Case—Seller Plaintiff	Enforcement of Judgment
Asbestos Personal Injury/Wrongful Death	Other Promissory Note/Collections Case	Enforcement of Judgment (20)
Product Liability (not asbestos or toxic/environmental) (24)	Insurance Coverage (not provisionally complex) (18)	Abstract of Judgment (Out of County)
Medical Malpractice (45)	Auto Subrogation	Confession of Judgment (non-domestic relations)
Medical Malpractice—Physicians & Surgeons	Other Coverage	Sister State Judgment
Other Professional Health Care Malpractice	Other Contract (37)	Administrative Agency Award (not unpaid taxes)
Other PII/PD/WD (23)	Contractual Fraud	Petition/Certification of Entry of Judgment on Unpaid Taxes
Premises Liability (e.g., slip and fall)	Other Contract Dispute	Other Enforcement of Judgment Case
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Real Property	Miscellaneous Civil Complaint
Intentional Infliction of Emotional Distress	Eminent Domain/Inverse Condemnation (14)	RICO (27)
Negligent Infliction of Emotional Distress	Wrongful Eviction (33)	Other Complaint (not specified above) (42)
Other PII/PD/WD	Other Real Property (e.g., quiet title) (26)	Declaratory Relief Only
Non-PII/PD/WD (Other) Tort	Writ of Possession of Real Property	Injunctive Relief Only (non-harassment)
Business Tort/Unfair Business Practice (07)	Mortgage Foreclosure	Mechanics Lien
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Quiet Title	Other Commercial Complaint Case (non-tort/non-complex)
Defamation (e.g., slander, libel) (13)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Other Civil Complaint (non-tort/non-complex)
Fraud (16)	Unlawful Detainer	Miscellaneous Civil Petition
Intellectual Property (19)	Commercial (31)	Partnership and Corporate Governance (21)
Professional Negligence (25)	Residential (32)	Other Petition (not specified above) (43)
Legal Malpractice	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	Civil Harassment
Other Professional Malpractice (not medical or legal)	Judicial Review	Workplace Violence
Other Non-PII/PD/WD Tort (35)	Asset Forfeiture (05)	Elder/Dependent Adult Abuse
Employment	Petition Re: Arbitration Award (11)	Election Contest
Wrongful Termination (36)	Writ of Mandate (02)	Petition for Name Change
Other Employment (15)	Writ—Administrative Mandamus	Petition for Relief From Late Claim
	Writ—Mandamus on Limited Court Case Matter	Other Civil Petition
	Writ—Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	



Superior Court of the State of California

COUNTY OF TULARE
CIVIL LEGAL PROCESSING
221 S. Mooney Blvd., Room 201
Visalia, California 93291
Telephone: (559) 730-5000

ALTERNATIVE DISPUTE RESOLUTION PACKAGE

This is Tulare County Superior Court's Alternative Dispute Resolution (ADR) Package. The package contains:

1. The court's current ADR Referral List;
2. Tulare County Superior Court's Local Rule 600 on Case Management Conferences;
3. Information about ADR.

At the time a civil complaint is filed, the clerk will issue a hearing date and time for the Case Management Conference (CMC). This information is placed on the front page of the complaint. Plaintiff must serve notice of the CMC hearing and this ADR Package on each defendant with the summons and complaint.

All parties appearing in the action are ordered to meet and confer prior to the CMC date regarding an agreed upon mediator and mediation date and time under Local Rule 600(a)(5).

Each party must file and serve a CMC statement on Judicial Council form CM-110 no later than 15 calendar days before the CMC hearing under California Rules of Court, rule 3.725 and Local Rule 600(a)(6).

Counsel and unrepresented parties are required to be present, either in person or by CourtCall (See Local Rule 108 regarding CourtCall), at the CMC hearing and have authority to enter into a mediation agreement if the parties have agreed to mediate. Each party appearing shall also have sufficient information and understanding of the case in order to evaluate it accurately.

Please be advised that monetary and/or terminating sanctions shall be imposed against parties and counsel who fail to comply with state and local rules regarding case management conferences without good cause.

ADR REFERRAL LIST January 2018		
NAME	HOURLY RATE	PROFILE INFORMATION
Honorable Howard R. Broadman (Ret.) 300 N. Willis Visalia, CA. 93291 Phone: (559) 738-1800 Fax: (559) 738-1102 Email: judgebroadman@judgebroadman.com	\$475.00 per hour	Click Here Resume on file
Kenneth M. Byrum 5080 California Ave #200 Bakersfield, CA 93309 Phone: (661) 861-6191 Fax: (661) 861-6190 Email: ken@kmbmediation.com	\$300.00 per hour	Click Here Resume on file
Russell D. Cook 1233 West Shaw, Suite 100 Fresno, CA 93711 Phone: (559) 225-2510 Fax: (559) 229-3941 Email: rdcook@rdcooklaw.com	\$285.00 per hour	Click Here Resume on file
Valerie V. Flugge 45406 South Fork Drive Three Rivers, CA 93271 Phone: (559)802-4234 Email: Valerie@sequoiamediation.com	\$250.00 per hours	Click Here Resume on file
Donald H. Glasrud Dietrich, Glasrud, Mallek & Aune 5250 North Palm Ave, Suite 402 Fresno, CA 93704 Phone: (559) 435-5250 Fax: (559) 435-8776 Email: dhg@dgmLaw.com	\$375.00 per hour	Click Here Resume on file
M. Troy Hazelton 3585 W. Beechwood Ave, Suite 101 Fresno, CA 93711 Phone: (559) 431-1300 Fax: (559) 431-1442 Email: Thazelton@pgllp.com	\$195.00 per hour	Click Here Resume on file
Lee M. Jacobson 1690 W. Shaw Avenue, Suite 201 Fresno, CA 93711	\$290.00 per hour	Click Here Resume on file

Phone: (559) 448-0400 Fax: (559) 448-0123 Email: lmj@jhnmlaw.com		
Daniel O. Jamison 8080 North Palm Avenue Fresno, CA 93711 Phone: (559)432-4500 Fax: (559)432-4590 Email: djamison@daklaw.com	\$320 per hour including travel time	Click Here Resume on file
Honorable Patrick J. O'Hara (Ret.) 300 N. Willis Visalia, CA. 93291 Phone: (559) 429-4570 Fax: (559) 429-4575 Email: judgeohara@judgeohara.com Website: www.judgeohara.com	\$475.00 per hour	Click Here Resume on file
Richard B. Isham 3814 W. Robinwood P.O. Box 8139 Visalia, CA. 93290 Phone: (559) 733-2257 Cell: (559)738-3963 Email: rbisham@att.net	\$300.00 per hour	Click Here Resume on file
Leah Catherine Launey 42490 Kaweah River Drive Three Rivers, CA 93271 Phone: (559) 561-4270 Fax: (559) 561-4273 Email: lclauney@lanneymediation.com	\$175.00 per hour 2 hour minimum	Click Here Resume on file
Kevin G. Little 1099 E. Champlain Drive, Suite A-124 Fresno, CA 93720 Phone: (559)708-4750 Fax: (559)420-0830 Email: kevinglittle@yahoo.com	\$200.00 per hour 2 hour minimum	Click Here Resume on file
Linda Luke 632 W. Oak Avenue Visalia, CA. 93291 Phone: (559) 733-9505 Fax: (559) 733-3910 Email: linda.luke@icloud.com	\$275.00 per hour	Click Here Resume on file
John T. Nagel	\$245.00 per hour	Click Here

1233 W. Shaw Avenue, #100 Fresno, CA 93711 Phone: (559)225-2510 Fax: (559) 225-2389 Email: johnnagel@comcast.net		Resume on file
Douglas E. Noll P.O. Box 2336 Clovis, CA. 93613 Phone: 800-785-4487 Fax: 877-765-1353 Email: doug@nollassociates.com	\$400 per hour 4 hour minimum	Click Here Resume on file
Honorable Robert. H. Oliver (Ret.) 5260 N. Palm Ave, Fourth Floor Fresno, CA 93704 Fax: (559) 432-5620 Email: roliver@bakermanock.com	\$400.00 per hour (2 Hour Minimum)	Click Here Resume on file
James M. Phillips 8080 N. Palm Ave, Suite 101 Fresno, CA 93711 Phone: (559) 261-9340 Fax: (888) 974-4321 Email: phillipsjp@aol.com	\$340.00 per hour	Click Here Resume on file
Michael Renberg 1540 E. Shaw Ave, Suite 123 Fresno, CA 93710 Phone: (559) 431-6300 Fax: (559) 432-1018 Email: mrenberg@prcelaw.com	\$240.00 per hour	Click Here Resume on file
Laurie Quigley Saldana 791 Price Street. #323 Pismo Beach, CA. 93449 Phone: (559) 730-1812 Email: laurie@mediationcentral.net	\$350.00 per hour	Click Here Resume on file
Tom Simonian 1100 W. Center Ave Visalia, CA. 93291 Phone: (559) 732-7111 Fax: (559)732-1540	\$290.00 per hour	Click Here Resume on file
Andrew R. Weiss 7109 North Fresno Street, Suite 250 Fresno, CA 93720	\$300.00 per hour	Click Here Resume on file

Phone: (559) 438-2080		
Cell: (559) 259-4663		
Email: aweiss@weissmartin.com		

CHAPTER 6 – MANAGING CIVIL CASES

Rule 600 – Case Management Conference

- (a) The Judicial Council has implemented state rules for the management of civil cases (Cal. Rules of Court, Chapter 2 Trial Court Management of Civil Cases, rules 10.900, et. Seq.).

In recognition of the state rules requiring the court to implement a case management Plan, the court elects to follow California Rules of Court, rule 3.714.

- (1) At the time the complaint is filed, the clerk will issue a hearing date for the Case Management Conference (CMC) to plaintiff that is no less than 120 days after the filing of the complaint. The clerk will also provide the Plaintiff with the court's Alternative Dispute Resolution (ADR) package including the list of the names of the mediators who have applied and met the court's mediation/arbitration qualifications pursuant to the program adopted by the court under California Rules of Court, rule 10.781. Plaintiff must serve a Notice of CMC and the ADR package on each defendant along with the summons and complaint.
- (2) Any party who files and serves a cross-complaint prior to the CMC must serve on each cross-defendant who is a new party to the action, a copy of the Notice of CMC and the ADR package along with the summons and cross-complaint. If a new cross-defendant is served after the initial CMC, the cross-complainant must serve the new cross-defendant with notice of any pending CMC, any assigned mediation date, trial, or settlement conference dates, and any other dates set by the court or orders made at the CMC.
- (3) If the plaintiff adds a new defendant or identifies a fictitiously named defendant after the initial CMC, along with the summons and complaint, plaintiff must serve the newly named defendant with notice of any pending CMC, any pending mediation date, any assigned trial and settlement conference dates, and any other dates set by the court or orders made at the CMC.
- (4) Proof of service of Notice of the CMC must be filed with the court within 60 days from the date the complaint is filed and may be included in the proof of service of the summons and complaint or cross-complaint.
- (5) This court has found that mediation is highly desirable and orders the parties to meet and confer prior to the CMC date regarding an agreed upon mediator and mediation date and time. A list of mediators and their fees are provided by the court in its ADR package. The mediator must be agreed upon before the CMC and the mediation date and time cleared with the mediator so the court may enter the date in the court's minute order.

- (6) Under California Rules of Court, rule 3.725, no later than 15 calendar days before the date set for the CMC, each party must file a CMC statement and serve it on all other parties in the case. Parties must use the mandatory CMC Statement (Judicial Council form CM-110). All applicable items on the form must be completed.
- (7) In lieu of each party's filing a separate case management statement, any two or more parties may file a joint statement.
- (b) **Presence Required – Counsel and unrepresented parties are required to be present, either in person or by telephonic appearance pursuant to The Superior Court of Tulare County, Local Rules, rule 108, and must have: (1) sufficient information and understanding of the case to evaluate it accurately, and (2) sufficient authority to enter into binding agreements such as the diversion of the case to arbitration, including binding arbitration, the setting of a trial date and mandatory settlement conference date, the dismissal of doe defendants or other parties, and the setting of a further case management conference.**
- (c) **Compliance – Failure to attend the case management conference will result in the court making whatever orders and imposing whatever sanctions as may be necessary and appropriate to obtain compliance with these rules, including but not limited to, a waiver of the right to a jury trial and a waiver of the right to object to a referral to arbitration or other alternate dispute resolution procedure.**
- (d) **Waiver of Notice – When all parties are present at the case management conference and a trial date and settlement conference dates are agreed to by the parties or ordered by the court, such presence is an effective waiver of a separate or formal notice of settlement conference and trial date. (01/01/03) (Revised 01/01/07, 01/01/09) (07/01/11)**

Alternative Dispute Resolution

There are different processes available to settle lawsuits without having to go to trial. The most common forms of ADR are Mediation, Arbitration, and Case Evaluation. In ADR, a trained, impartial person decides disputes or helps the parties reach resolutions of their disputes for themselves. The persons are neutrals who are normally chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.

Advantages of ADR

- Often quicker than going to trial, a dispute may be resolved in a matter of days or weeks instead of months or years.

- Often less expensive, saving the litigants court costs, attorney's fees and expert fees.
- Can permit more participation, allowing the parties the opportunity to tell their side of the story with more control over the outcome.
- Allows for flexibility in choice of ADR processes and resolution of the dispute.
- Fosters cooperation by allowing the parties to work together with the neutral to resolve the dispute and mutually agree to a remedy.
- Often less stressful than litigation. Most people have reported a high degree of satisfaction with ADR.

Because of these advantages, many parties choose ADR to resolve disputes instead of filing a lawsuit. Even after a lawsuit has been filed, the court can refer the dispute to a neutral before the lawsuit becomes costly. ADR has been used to resolve disputes even after trial, when the result is appealed.

Disadvantages of ADR

ADR may not be suitable for every dispute.

If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute. The neutral may charge a fee for his or her services. If the dispute is not resolved through ADR, the parties may then have to face the usual and traditional costs, such as attorney's fees and expert fees.

Lawsuits must be brought within specified periods of time, known as Statutes of Limitations. Parties must be careful not to let a Statute of Limitation run while a dispute is in an ADR process.

The Most Common Types of ADR

Mediation

In mediation, the mediator (a neutral) assists the parties in reaching a mutually acceptable resolution of their dispute. Unlike lawsuits or some other types of ADR, the mediator does not decide how the dispute is to be resolved. The parties do. It is a cooperative process in which the parties work together toward a resolution that tries to meet everyone's interests, instead of working against each other. Mediation normally leads to better relations between the parties and to lasting resolutions. It is particularly effective when parties have a continuing relationship, such as neighbors or businesses. It also is very effective where personal feelings are getting in the way of a resolution. Mediation normally gives the parties a chance to freely express their

positions. Mediation can be successful for victims seeking restitution from offenders. When there has been violence between the parties, a mediator can meet separately with the parties.

Arbitration

In arbitration, the arbitrator (a neutral) reviews evidence, hears arguments, and makes a decision (award) to resolve the dispute. This is very different from mediation whereby the mediator helps the parties reach their own resolution. Arbitration normally is more informal, quicker, and less expensive than a lawsuit. In a matter of hours, an arbitrator often can hear a case that otherwise may take a week in court to try. This is because the evidence can be submitted by documents rather than by testimony.

There are Two Types of Arbitration in California

1. **Private arbitration** by agreement of the parties involved in the dispute. This type takes place outside of the court and normally is binding. In most cases, "binding" means that the arbitrator's decision (award) is final and there will not be a trial or an opportunity to appeal the decision.
2. **Judicial arbitration** ordered by the court. The arbitrator's decision is not binding unless the parties agree to be bound. A party who does not like the award may file a request for trial with the court within a specified time. However, if that party does not receive a more favorable result at trial, the party may have to pay a penalty.

EXHIBIT 2

1 **S. BRETT SUTTON 143107**
JARED HAGUE 251517
2 **JONATHAN W. BLACK 280421**
SUTTON HAGUE LAW CORPORATION, P.C.
3 5200 N. Palm Ave., Ste. 203
Fresno, California 93704
4 Telephone: (559) 325-0500
Facsimile: (559) 981-1217
5 Attorneys for Defendant
6 **SAPUTO CHEESE USA, INC.**

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF TULARE

9 * * *

10 DON M. VASQUEZ, individually and on
11 behalf of others similarly situated,

12 Plaintiff,

13 vs.

14 SAPUTO CHEESE USA INC., a Delaware
15 Corporation; and DOES 1 through 25, inclusive,

16 Defendants.

Case No. 282978

**DEFENDANT SAPUTO CHEESE
USA, INC.'S ANSWER TO THE
COMPLAINT**

Complaint Filed: May 27, 2020
Trial Date: None.

1 Defendant SAPUTO CHEESE USA, INC. (“Defendant”) hereby answers the unverified
2 Complaint of Plaintiff DON M. VASQUEZ (“Plaintiff”) in the above-referenced matter, as
3 follows:

4 **GENERAL DENIAL**

5 Pursuant to section 431.30(d) of the California Code of Civil Procedure, Defendant
6 denies, generally and specifically, each and every allegation contained in Plaintiff’s Complaint.

7 **AFFIRMATIVE DEFENSES**

8 Without waiving the foregoing, Defendant asserts the following separate and affirmative
9 defenses to Plaintiff’s Complaint, and each cause of action, claim, and allegation contained
10 therein:

11 **FIRST AFFIRMATIVE DEFENSE**

12 1. The Complaint, and each cause of action stated therein, fails to state facts
13 sufficient to constitute a cause of action upon which relief can be granted.

14 **SECOND AFFIRMATIVE DEFENSE**

15 2. The Complaint, and each cause of action purportedly therein contained, fails to
16 state facts sufficient to entitle Plaintiff and/or the putative class to an award of general, special,
17 exemplary, or punitive damages because Plaintiff failed to plead facts sufficient to support
18 allegations of malice, oppression or fraud.

19 **THIRD AFFIRMATIVE DEFENSE**

20 3. Plaintiff has failed to state facts sufficient to entitle Plaintiff and/or the putative
21 class to recovery of any costs of suit incurred herein and/or an award of attorneys’ fees.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 4. Plaintiff and/or the putative class have failed to exercise reasonable and ordinary
24 care, caution or prudence and all alleged injuries and damages, if any, were proximately caused
25 by and/or contributed to by Plaintiff’s and/or the putative class’s own negligence and/or
26 intentional conduct and, therefore, any recovery to which they might otherwise be entitled must
27 be reduced by reason of their contributory or comparative negligence and/or intentional conduct.

28 //

1 **FIFTH AFFIRMATIVE DEFENSE**

2 5. Plaintiff and/or the putative class have failed to take reasonable affirmative action
3 to mitigate their damages alleged in the Complaint and, therefore, are barred from any recovery
4 to the extent that they have failed to mitigate their damages.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 6. Plaintiff's Complaint, and each cause of action stated therein, is barred by the
7 applicable statute of limitations, including, but not limited to, the limitations periods set forth in
8 California Code of Civil Procedure sections 335.1, 343, 337, 339, and 340, as well as the
9 limitations periods set forth in the California Labor Code and California Business and
10 Professions Code section 17208.

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 7. Defendant alleges, without admitting that it engaged in any of the acts, conduct or
13 statements attributed to it by the Complaint, that any acts, omissions, conduct or statements it
14 may have engaged in were justified, for legitimate, non-discriminatory reasons and/or privileged.

15 **EIGHTH AFFIRMATIVE DEFENSE**

16 8. Plaintiff's and/or the putative class's claims are barred by their failure to properly
17 exhaust administrative remedies, the exhaustion of which is a condition precedent to the
18 maintenance of their causes of action.

19 **NINTH AFFIRMATIVE DEFENSE**

20 9. To the extent Plaintiff and/or the putative class seek to recover general
21 compensatory damages, they are not entitled to such recovery on the grounds that the Complaint
22 will not support a claim for general compensatory damages.

23 **TENTH AFFIRMATIVE DEFENSE**

24 10. Plaintiff's claims are barred through the application of the doctrine of *res*
25 *judicata*.

26 **ELEVENTH AFFIRMATIVE DEFENSE**

27 11. Plaintiff's claims are barred through the application of the doctrines of estoppel,
28 judicial estoppel, and collateral estoppel.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TWELFTH AFFIRMATIVE DEFENSE

12. The Complaint’s claims are barred by the doctrine of laches due to Plaintiff’s inexcusable and unreasonable delay in filing this action, thereby causing substantial prejudice to Defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

13. The Complaint’s claims are barred by the doctrine of waiver.

FOURTEENTH AFFIRMATIVE DEFENSE

14. The Complaint’s claims are barred by the doctrine of unclean hands.

FIFTEENTH AFFIRMATIVE DEFENSE

15. The Complaint’s claims are barred by the doctrine of consent.

SIXTEENTH AFFIRMATIVE DEFENSE

16. The Complaint’s claims are barred by Plaintiff’s and/or the putative class’s failure to exhaust their internal remedies.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. At all times Defendant acted and made decisions reasonably and in good faith, based upon all relevant facts and circumstances known by Defendant at the times it acted, thereby barring Plaintiff and/or the putative class from recovery in this action.

EIGHTEENTH AFFIRMATIVE DEFENSE

18. Any duty or obligation, contractual or otherwise, that the Complaint claims is owed by Defendant to Plaintiff and/or the putative class has been fully performed, satisfied and/or discharged.

NINETEENTH AFFIRMATIVE DEFENSE

19. Defendant alleges that the imposition of penalties, or any form of punitive and/or exemplary damages, constitutes an impermissible restriction on speech and violation of the First Amendment of the United States Constitution.

//
//
//

1 **TWENTIETH AFFIRMATIVE DEFENSE**

2 20. The Complaint's punitive damages claims violate the right of Defendant to
3 procedural due process under the Constitutions of the United States of America and the State of
4 California and should be stricken.

5 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

6 21. Defendant alleges that punitive damages are inappropriate and may not be
7 awarded against Defendant in that Defendant acted in good faith with respect to all dealings with
8 Plaintiff and/or the putative class.

9 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

10 22. Defendant denies that Plaintiff and/or the putative class are entitled to any
11 recovery against Defendant. However, in the event that there is any award against Defendant,
12 the amount owed by Defendant to Plaintiff and/or the putative class as a result of that award is to
13 be reduced and/or offset by an amount equal to all monies owed by Plaintiff and/or the putative
14 class to Defendant for, among other things, Plaintiff's and/or the putative class's unlawful and/or
15 improper acts.

16 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

17 23. The Complaint's allegations concerning Plaintiff's and/or the putative class's
18 entitlement to statutory and/or civil penalties violate the right of Defendant to procedural due
19 process under the Constitutions of the United States of America and the State of California and
20 should be stricken.

21 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

22 24. The Complaint's claims are barred in whole or in part to the extent that any
23 conduct attributable to Defendant was ratified by Plaintiff and/or the putative class, and/or their
24 representatives or agents.

25 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

26 25. The Complaint, and each cause of action contained therein, is barred because
27 Defendant has paid Plaintiff and/or the putative class in full for their services.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TWENTY-SIXTH AFFIRMATIVE DEFENSE

26. Plaintiff and/or the putative class sustained no injury or damages by reason of any act or omission attributable to Defendant.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

27. Plaintiff knew or should have known that their claims are without any reasonable basis in law and equity and cannot be supported by a good faith argument for extension, modification, or reversal of existing law. As a result of Plaintiff’s filing of this lawsuit, Defendant has been required to obtain the services of legal counsel and has and will continue to incur significant attorneys’ fees and legal costs in defense of this frivolous case. Defendant is therefore entitled to recover reasonable attorneys’ fees, expenses, and costs incurred by and through this action in accordance with California Code of Civil Procedure section 128.7 and/or, if applicable, 128.5 and 128.6.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

28. Defendant is entitled to all available privileges to the maximum extent provided for under all applicable federal, state, and local laws.

TWENTY-NINTH AFFIRMATIVE DEFENSE

29. Plaintiff and/or the putative class suffered no damages or, in the alternative, damages incurred by them were directly and proximately caused by Plaintiff and/or the putative class.

THIRTIETH AFFIRMATIVE DEFENSE

30. Defendant is not liable to Plaintiff and/or the putative class to the extent they have already settled all or some of the claims by way of compromise and release.

THIRTY-FIRST AFFIRMATIVE DEFENSE

31. Defendant is not liable to Plaintiff and/or the putative class as Defendant provided them all required meal and/or rest breaks.

//
//
//

1 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

2 32. Plaintiff's and/or the putative class's claims against Defendant are barred, in
3 whole or in part, because the otherwise compensable time implicated by the Complaint was *de*
4 *mimimis*.

5 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

6 33. The Complaint is barred under the doctrine of "safe harbor." That is, Defendant's
7 practices are protected as approved or exempted business practices.

8 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

9 34. Plaintiff and/or the putative class lack standing to sue.

10 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

11 35. All damages allegedly incurred by Plaintiff and/or the putative class were directly
12 and proximately caused by their own conduct and/or the conduct of other persons for which
13 Defendant is not responsible.

14 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

15 36. Defendant did not engage in any willful conduct with respect to Plaintiff and/or
16 the putative class.

17 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

18 37. Plaintiff's and/or the putative class's claims against Defendant are barred, in
19 whole or in part, because some or all of Defendant's employees implicated in the Complaint are
20 administrative or executive employees, or both, and are exempt under applicable law from
21 overtime, meal break, rest break, and/or wage statement requirements.

22 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

23 38. Plaintiff's and/or the putative class's claims against Defendant are barred, in
24 whole or in part, because Plaintiff is not an adequate representative of the putative classes
25 identified in the Complaint.

26 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

27 39. Plaintiff's and/or the putative class's claims against Defendant are barred, in
28 whole or in part, because the claims asserted in the Complaint are not properly asserted as a class

1 action or a collective action and/or because the claims asserted in the Complaint do not satisfy
2 the requirements to proceed as a class action or a collective action.

3 **FORTIETH AFFIRMATIVE DEFENSE**

4 40. The Complaint and each of its causes of action are barred by the doctrine of
5 avoidable consequences.

6 **FORTY-FIRST AFFIRMATIVE DEFENSE**

7 41. Plaintiff's claims are barred to the extent they and/or the putative class were
8 properly classified as exempt or otherwise exempt or excepted from the requirements of the
9 Labor Code and/or applicable Wage Order.

10 **FORTY-SECOND AFFIRMATIVE DEFENSE**

11 42. Plaintiff and/or the putative class unreasonably failed to take advantage of any
12 preventative or corrective opportunities provided by Defendant, including, without limitation, by
13 failing to notify Defendant of alleged wrongdoing and/or violations of Defendant's policies.

14 **FORTY-THIRD AFFIRMATIVE DEFENSE**

15 43. To the extent Plaintiff and/or the putative class are seeking compensation for
16 work not recorded on the company time records, Defendant did not know and had no reason to
17 know of any off-the-clock work.

18 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

19 44. The Complaint violates Defendant's rights under both the federal and state
20 constitutions to confront witnesses against it.

21 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

22 45. Plaintiff and/or the putative class are not entitled to recover any penalty damages,
23 such as those sought under California Labor Code sections 2699, et seq. or any of the causes of
24 action in the Complaint, and any award of such damages or penalties would, in general, or under
25 the facts of each particularized claim, be confiscatory, oppressive, and violate Defendant's
26 constitutional rights under the provisions of the United States Constitution, including, but not
27 limited to, the due process clauses of the Fifth and Fourteenth Amendments of the United States
28 Constitution, and the Excessive Fines and the Cruel and Unusual Punishment clauses of the

1 Eighth Amendment to the United States Constitution, as well as the Due Process and Excessive
2 Fine clauses contained in the California Constitution.

3 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

4 46. Plaintiff's Complaint, and each cause of action stated therein, is barred and should
5 be dismissed due to the existence of a binding Arbitration Agreement between Plaintiff and
6 Defendant that deprives this Court of jurisdiction. Alternatively, to the extent that any of
7 Plaintiff's causes of action are not subject to the binding Arbitration Agreement, the Court
8 should stay the proceedings pending resolution of arbitration.

9 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

10 47. Plaintiff's Complaint, and each cause of action stated therein, is preempted by
11 Federal law.

12 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

13 48. The alleged acts or omissions of Defendant were not the proximate cause of
14 Plaintiff's and/or the putative class's alleged injuries.

15 **FORTY-NINTH AFFIRMATIVE DEFENSE**

16 49. Any injuries suffered by Plaintiff and/or the putative class, if any, were not a
17 result of their employment with Defendant.

18 **FIFTIETH AFFIRMATIVE DEFENSE**

19 50. Plaintiff's and/or the putative class's claims against Defendant are barred, in
20 whole or in part, because the claims are pre-empted and/or barred by Section 301 of the Labor
21 Management Relations Act of 1947. (U.S.C. § 185(a).)

22 **FIFTY-FIRST AFFIRMATIVE DEFENSE**

23 51. Plaintiff's and/or the putative class's claims against Defendant are barred, in
24 whole or in part, because Plaintiff and/or the putative class did not suffer any actual injury, loss,
25 or damage as a result of conduct by Defendant, or because Plaintiff's and/or the putative class's
26 claimed injury, loss, or damage is too uncertain and speculative.

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIFTY-SECOND AFFIRMATIVE DEFENSE

52. Plaintiff's and/or the putative class's claims against Defendant are barred, in whole or in part, because Defendant reasonably relied on some or all of the employees implicated in the Complaint to achieve compliance with wage and hour requirements and they should not be permitted to profit by their own malfeasance or nonfeasance.

FIFTY-THIRD AFFIRMATIVE DEFENSE

53. Plaintiff's and/or the putative class's claims against Defendant are barred, in whole or in part, because they are the proper province of the National Labor Relations Act, and are therefore preempted. (*See*, 29 U.S.C. § 157 and § 158; *San Diego Bldg. Trades Council, Millmen's Union, Local 2020 v. Garmon* (1959) 359 U.S. 236, 243-244.)

FIFTY-FOURTH AFFIRMATIVE DEFENSE

54. All of the causes of action in the Complaint are barred because they are uncertain.

FIFTY-FIFTH AFFIRMATIVE DEFENSE

55. Plaintiff and each of the putative class are not entitled to any civil penalty award under California Labor Code section 2699 *et seq.* because, at all relevant times, Defendant did not willfully fail to comply with the compensation provisions of the California Labor Code.

FIFTY-SIXTH AFFIRMATIVE DEFENSE

56. Plaintiff and each of the putative class are not entitled to any penalty award under California Labor Code section 2699 *et seq.* because a good faith dispute existed and exists as to whether any amounts are owed, precluding Plaintiff and the putative class from obtaining penalties for any Labor Code section for which Plaintiff and the putative class must demonstrate bad faith.

FIFTY-SEVENTH AFFIRMATIVE DEFENSE

57. Plaintiff and each of the putative class are not entitled to any penalty award under California Labor Code section 2699 *et seq.* because there was no knowing and/or intentional failure by Defendant to comply with any Labor Code section for which Plaintiff and the putative class must demonstrate a knowing and/or intentional failure.

//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIFTY-EIGHTH AFFIRMATIVE DEFENSE

58. All of the causes of action in the Complaint are barred to the extent Plaintiff and/or the putative class allege claims under California law, including assessment of civil penalties under California Labor Code section 2699 *et seq.*, or other law, since those claims violate the rights of Defendant to substantive and procedural due process as provided under the United States and California Constitutions on the grounds, among others, that the damages, if any, of each putative class require complicated proof of numerous individualized issues, that serious fundamental due process questions are raised, that administrative proceedings are available through the Department of Industrial Relations to provide the putative class with an inexpensive and effective remedy.

FIFTY-NINETH AFFIRMATIVE DEFENSE

59. Plaintiff and the putative class are not entitled to recover any penalty damages, such as those sought under California Labor Code section 2699 *et seq.* or any of the causes of action in the Complaint, and any award of such damages or penalties would, in general, or under the facts of each particularized claim, violate Defendant’s constitutional rights under the provisions of the United States Constitution, including, but not limited to, the due process clauses of the Fifth and Fourteenth Amendments of the United States Constitution, and the Excessive Fines and the Cruel and Unusual Punishment clauses of the Eighth Amendment to the United States Constitution, as well as the Due Process and Excessive Fine clauses contained in the California Constitution.

SIXTIETH AFFIRMATIVE DEFENSE

60. Defendant alleges that Plaintiff and the putative class have failed to allege and cannot prove the facts and prerequisites necessary to maintain a representative action.

SIXTY-FIRST AFFIRMATIVE DEFENSE

61. The named representative of the putative class is not an adequate, appropriate or competent representative.

//
//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIXTY-SECOND AFFIRMATIVE DEFENSE

62. The Complaint violates Defendant’s rights under both the federal and state constitutions to confront witnesses against them and, therefore, allowing Plaintiff to proceed on his causes of action against Defendant in a representative capacity on behalf of putative class violates Defendant’s constitutional rights under the United States and California constitutions.

SIXTY-THIRD AFFIRMATIVE DEFENSE

63. Defendant is not liable to Plaintiff or the putative class, as Defendant complied with all applicable Wage Order provisions pertaining to the implementation of an Alternative Workweek Schedule.

SIXTY-FOURTH AFFIRMATIVE DEFENSE

64. Defendant is not liable to Plaintiff or the putative class, as Defendant at all times complied with Labor Code section 511.

SIXTY-FIFTH AFFIRMATIVE DEFENSE

65. Plaintiff’s claims are barred due to the fact that Defendant substantially complied with all relevant provisions of the Labor Code and all applicable provisions of all applicable Wage Orders.

SIXTY-SEVENTH AFFIRMATIVE DEFENSE

66. Defendant alleges that they presently have insufficient knowledge or information on which to form a belief as to whether it may have additional, yet unstated, affirmative defenses available. Accordingly, Defendant reserves the right to assert additional affirmative defenses in the event discovery indicates they would be appropriate.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff take nothing by way of the Complaint;
2. That the Complaint be dismissed with prejudice;
3. That the Court enter judgment for Defendant and against Plaintiff on alleged claims;
4. That the Court award Defendant its attorneys’ fees and costs of suit; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. The Court grant Defendant such other and further relief as the Court deems just and proper.

Date: July 23, 2020

SUTTON HAGUE LAW CORPORATION, P.C.

BY:  _____

S. BRETT SUTTON
JARED HAGUE
JONATHAN W. BLACK
Attorneys for Defendant
SAPUTO CHEESE USA, INC.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Don M. Vasquez

(b) County of Residence of First Listed Plaintiff Tulare County, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Lebe Law, APLC (Jonathan M. Lebe; Zachary Gershman) 777 S. Alameda Street, Second Floor, Los Angeles, CA 90021 (213) 358-7046

DEFENDANTS

Saputo Cheese USA, Inc.

County of Residence of First Listed Defendant Lake County, IL (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Sutton Hague Law Corp. (S. Brett Sutton; Jared Hague; Jonathan W. Black) 5200 N. Palm Avenue, Suite 203, Fresno, California 93704 (559) 325-0500

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location. Includes options for Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, and Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 1332, 1441, and 1446

Brief description of cause: Class Action alleging violations of the California Labor Code

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE N/A DOCKET NUMBER

DATE 07/24/2020 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

1 **S. BRETT SUTTON 143107**
JARED HAGUE 251517
2 **JONATHAN W. BLACK 280421**
SUTTON HAGUE LAW CORPORATION, P.C.
3 5200 N. Palm Avenue, Suite 203
Fresno, California 93704
4 Telephone: (559) 325-0500
Facsimile: (559) 981-1217
5 Attorneys for Defendants
6 **SAPUTO CHEESE USA, INC.**

7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**

9 * * *

10 DON M. VASQUEZ, individually and on
11 behalf of others similarly situated,

12 Plaintiff,

13 vs.

14 SAPUTO CHEESE USA INC., a Delaware
15 Corporation; and DOES 1 through 25, inclusive,

16 Defendants.
17

Case No.

**DEFENDANT SAPUTO CHEESE USA
INC.'S CORPORATE DISCLOSURE
STATEMENT**

Complaint Filed: May 27, 2020

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN
2 DISTRICT OF CALIFORNIA AND PLAINTIFF DON M. VASQUEZ AND HIS
3 ATTORNEYS OF RECORD:

4 Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, Defendant Saputo Cheese
5 USA, Inc. discloses the following:

6 Saputo Cheese USA, Inc. is a wholly-owned subsidiary of Saputo, Inc.

7 Date: July 24, 2020

SUTTON HAGUE LAW CORPORATION, P.C.

8

9

10

BY: 

Attorneys for Defendants
S. BRETT SUTTON
JARED HAGUE
JONATHAN W. BLACK
Attorneys for Defendants
SAPUTO CHEESE USA, INC.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **S. BRETT SUTTON 143107**
JARED HAGUE 251517
2 **JONATHAN W. BLACK 280421**
SUTTON HAGUE LAW CORPORATION, P.C.
3 5200 N. Palm Avenue, Suite 203
Fresno, California 93704
4 Telephone: (559) 325-0500
Facsimile: (559) 981-1217
5 Attorneys for Defendants
6 **SAPUTO CHEESE USA, INC.**

7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**

9 * * *

10 DON M. VASQUEZ, individually and on
11 behalf of others similarly situated,

12 Plaintiff,

13 vs.

14 SAPUTO CHEESE USA INC., a Delaware
15 Corporation; and DOES 1 through 25, inclusive,

16 Defendants.

Case No.

**DECLARATION OF CHRISTINE
HEDRICK IN SUPPORT OF
DEFENDANT SAPUTO CHEESE USA
INC.'S NOTICE OF REMOVAL**

(Tulare County Superior Court Case
No. 282978)

Complaint Filed: May 27, 2020

DECLARATION OF CHRISTINE HEDRICK

1
2 I, CHRISTINE HEDRICK, declare as follows:

3 1. I am the Director of Human Resources Operations, over the age of 18, and a
4 resident of Visalia, California. I have personal knowledge of the following facts and could
5 testify competently to them if called to do so. The facts set forth herein are personally known to
6 me and, unless otherwise noted, are based on my own firsthand knowledge and/or observation. I
7 make this Declaration in Support of Saputo Cheese USA, Inc.'s ("Saputo") Notice of Removal.

8 2. As the Director of Human Resources Operations, I am familiar with Saputo's
9 general business operations and structure, especially with regard to human resources. In my
10 capacity, I know where Saputo is incorporated, where its headquarters are located, and what
11 overall activities are carried out at corporate headquarters. In addition, I have access to payroll
12 and personnel information for all California employees of Saputo Cheese USA, Inc., including,
13 but not limited to, personally identifying information, rates of pay, hours of work, paycheck
14 information, and payroll practices and procedures.

15 3. In connection with Plaintiff Don Vasquez's lawsuit against Saputo, and the
16 Company's Notice of Removal, I obtained payroll information relating to Mr. Vasquez's claims.
17 I understand that this lawsuit is a class action lawsuit, and that Mr. Vasquez is suing on behalf of
18 himself and all non-exempt current and former California employees who have worked for
19 Saputo at any time from April 6, 2016 to the present. My understanding is that the lawsuit was
20 filed on or about May 27, 2020. According to information I received from our payroll
21 department, approximately 1072 current hourly, non-exempt employees work for Saputo in
22 California, and approximately 312 former hourly, non-exempt employees worked for Saputo in
23 California from May 27, 2017 to the present ("Putative Class").

24 4. I also obtained and reviewed payroll and personnel information about Mr.
25 Vasquez himself. According to Saputo's most recent information regarding Mr. Vasquez, Mr.
26 Vasquez is a resident of Tulare, California.

27 5. In addition to Mr. Vasquez, I have personally reviewed personnel information of a
28 sample of Putative Class members from each of Saputo Cheese USA, Inc.'s five California

1 locations, and I confirmed that at least one current employee in the Putative Class at each
2 location is a resident of California. For example, according to Saputo records, Putative Class
3 members with Employee ID numbers 101940 (Tulare Paige location), 101407 (Tulare Levin
4 location), 107319 (Tulare Bardsley location), 102118 (Newman location), and 101158 (South
5 Gate location) each reside in California.

6 6. Saputo is a corporation organized under the laws of the State of Delaware.
7 Saputo has been a Delaware corporation since at least April 6, 2016.

8 7. Saputo is headquartered in Lincolnshire, Illinois. The majority of Saputo's
9 officers are located at its headquarters in Lincolnshire, Illinois, and a majority of its officers and
10 directors live in and around the Greater Chicago Metropolitan Area, where Lincolnshire is
11 located. Saputo's officers and high-level executives located in Lincolnshire, Illinois direct,
12 control, and coordinate a majority of Saputo's activities from the Lincolnshire headquarters.
13 Saputo performs the majority of its executive and administrative functions at its Lincolnshire
14 headquarters as well. This is and has been the case since at least April 6, 2016.

15 8. One of the items of information I obtained from our payroll department was the
16 average hourly rate for the Putative Class. This number was calculated by taking the average
17 hourly rate of each of Saputo's five California facilities, adding those rates together, and dividing
18 by 5. Based on payroll information I obtained, the hourly rate at the five facilities ranged
19 between \$19.63 and \$28.22. According to this information, the average rate of the Putative
20 Class was \$24.92/hour.

21 9. From my employment with Saputo, I know that our pay periods are biweekly.
22 From May 27, 2016 to the present, more than 216 weeks have elapsed. According to
23 information obtained from the payroll department, the total number of weeks worked by the
24 Putative Class over this time period is at least 231,246.

25 10. I understand there is a subgroup of employees in the Putative Class, consisting of
26 only former employees who worked at any time from May 27, 2017 to the present. Over this
27 time period, according to information I obtained from the payroll department, there are 312
28

1 former employees. For all (or very close to all), their employment ended more than 30 days
2 before the date I signed this declaration, or July 24, 2020.

3 11. I also understand there is a final subgroup of employees in the Putative Class,
4 consisting of employees who worked at any time from May 27, 2019 to the present. Over this
5 time period, at least 29 pay periods have elapsed, and according to Saputo's payroll information,
6 California Saputo non-exempt employees have worked a total of at least 31,165 pay periods over
7 this time period.

8 I declare under penalty of perjury under the laws of the United States of America that the
9 foregoing is true and correct, and that this declaration was executed in Visalia, California, on
10 July 24, 2020.

11
12 

13 _____
14 CHRISTINE HEDRICK
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Saputo Cheese Cheated California Workers Out of Proper Pay, Class Action Alleges](#)
