

1 Plaintiff Jose Cubias ("Plaintiff") alleges as follows:
2

3 **INTRODUCTION**

4 1. Plaintiff brings this Complaint to recover wages and civil penalties
5 that are owed to him and other past and present General Mangers as a result of a series of
6 Labor Code violations by Carl Karcher Enterprises, Inc. (hereinafter "CKE" or
7 "Defendant").
8

9 2. Plaintiff brings the first through ninth causes of action in this
10 Complaint as a Private Attorney General on behalf of the State of California and other
11 current and former CKE employees pursuant to California Labor Code §2699 et seq.
12

13 3. Plaintiff brings first through ninth causes of action in this Complaint
14 on behalf of himself and a class of current and former CKE employees pursuant to
15 California Code of Civil Procedure §382. The class is defined as follows: All individuals
16 who have worked for Defendant as a General Manager in California at any time since the
17 date four years prior to the filing the instant case.
18

19 4. With regard to the violations of Business and Professions Code
20 §17200 et seq. alleged in the tenth cause of action, Plaintiff brings a representative action
21 on behalf of all CKE employees subject to the unfair practices that are described or
22 incorporated by reference therein.
23

24 **THE PARTIES**

25 5. Cubias is a citizen United States and a resident of Los Angeles
26 County, California. From 1982 until October of 2009, CKE employed Cubias in Los
27 Angeles County, California. At the time of his termination and for more than five years
28 prior, Cubias held the position of General Manager.

1 6. CKE is a corporation organized under the laws of the state of
2 California with its principal place of business in Orange County, California.

3
4 7. Plaintiff is currently unaware of the true names and capacities of the
5 Defendants sued herein as Does 1 through 10 (the "Doe Defendants") and therefore sues
6 the Doe Defendants by such fictitious names. Cubias will amend this Complaint to allege
7 the true names and capacities of the Doe Defendants when they are ascertained.

8
9 8. Plaintiff is informed and believes, and thereon alleges, that the Doe
10 Defendants are the partners, agents, or principals and co-conspirators of the named
11 Defendant, and of each other; that the named Defendant and the Doe Defendants
12 performed the acts and conduct herein alleged directly, aided and abetted the performance
13 thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and
14 conduct, and therefore each of the Doe Defendants is liable to Cubias to the extent of the
15 liability of the named Defendants as alleged herein.

16
17 9. Plaintiff is informed and believes, and on that basis alleges, that at all
18 times herein mentioned, all of the Defendants are a single employer.

19
20 10. Plaintiff is informed and believes, and on that basis alleges, that at all
21 times herein mentioned, each of the Defendants was the agent, servant and/or employee of
22 each of the other Defendants and in connection with the matters hereinafter alleged, was
23 acting within the scope of such agency and employment, and each Defendant ratified each
24 and every act, omission and thing done by each and every other Defendant herein.

1 26. CKE uses a common system to track meal and rest breaks for all of
2 its General Managers in California.

3
4 27. CKE uses a common system to track vacation time for all of its
5 General Managers in California.

6
7 28. CKE uses a common system to track payroll for all of its General
8 Managers in California.

9
10 29. In 2004, CKE paid \$9 million dollars to settle a lawsuit regarding
11 unpaid overtime due to General Managers. The 2004 lawsuit specifically alleged that
12 CKE has misclassified General Managers as being exempt from overtime when the
13 managers where actually entitled to overtime under California Law and required General
14 Managers to work hours in excess of 8 hours in a day and 40 hours in a week without
15 compensation.

16
17 30. Despite having settled the 2004 lawsuit, CKE did not change the way
18 that it paid its General Managers. CKE continued to require that General Managers work
19 hours in excess of 8 hours in a day and 40 hours in a week without compensation.

20
21 31. In April of 2009, CKE finally reclassified all General Managers in
22 California as being entitled to overtime. Although it reclassified all of its General
23 Managers, Defendant did not pay any of the General Managers any of the unpaid overtime
24 to which they were entitled for overtime work performed after the 2004 settlement and
25 prior to the reclassification.

1 FIRST CAUSE OF ACTION

2 **(Class and Representative Claim for Failure to Pay Overtime Wages in Violation of**
3 **Labor Code §§510 and 1194)**

4 32. Plaintiff realleges and incorporates herein by this reference the
5 allegations of paragraphs 1 through 31 hereof, inclusive.

6
7 33. At all times relevant hereto, CKE maintained a uniform policy that
8 limited the budget available for each restaurant to spend on hourly labor.

9
10 34. At all times relevant hereto, CKE maintained a uniform policy that
11 set minimum requirements for staffing and service at each restaurant.

12
13 35. As a result of the uniform policies described above, it is and has at all
14 times relevant hereto been necessary for each General Manager to devote more than fifty
15 percent of his or her time to non-managerial tasks that could be performed by hourly
16 employees. These tasks include entering sales into a cash register, cleaning, preparing
17 food, and handing food to guests.

18
19 36. General Managers do not qualify for any exemption to California
20 overtime requirements.

21
22 37. California Labor Code §510 requires that CKE pay each of its
23 General Managers one and one half times his or her regular rate of pay for any work in
24 excess of 8 hours in one workday, in excess of 40 hours in one workweek, and for the first
25 8 hours of work on the seventh day of a workweek.

1 45. Because the General Manager is actually working, he or she should
2 not be subject to any reduction of his or her vacation time. Nonetheless, CKE maintains a
3 uniform policy of deducting vacation days when a General Manager is scheduled for
4 vacation but actually working in the restaurant. CKE maintains this policy despite having
5 actual knowledge of the fact that General Managers are required to work in the restaurant
6 while scheduled on vacation.

7
8 46. Cubias' employment at CKE ended in October of 2009.

9
10 47. At the time his employment ended, CKE did not pay Cubias all of the
11 accrued vacation wages to which he was entitled. Specifically, CKE did not pay Cubias
12 for vacation days that had been improperly deducted while Cubias was actually working
13 in the restaurant.

14
15 48. Since at least 2005, CKE has willfully failed to pay vacation wages
16 due to each General Manager who was terminated or quit his or her job at CKE.
17 Specifically, CKE did not pay each General Manager for vacation days that had been
18 improperly deducted while he or she was actually working in the restaurant.

19
20 49. CKE is guilty of the tort of conversion with regard to each vacation
21 wage payment that the company has withheld from a General Manager.

22
23 50. At all times described herein, CKE has acted willfully and
24 deliberately with oppression, fraud and malice to deprive its employees of the vacation
25 pay to which they are entitled.

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THIRD CAUSE OF ACTION

(Class and Representative Claim for

Failure to Provide Meal Breaks in Violation of Labor Code §§512 and 1198)

51. Plaintiff realleges and incorporates herein by this reference the allegations of paragraphs 1 through 50 hereof, inclusive.

52. California Labor Code §512 and the applicable Wage Order require that CKE provide an uninterrupted thirty-minute meal break to each employee who works five or more hours in a day.

53. Labor Code §1198 requires that CKE comply with the meal break requirements of the applicable Wage Order.

54. General Managers at CKE routinely work shifts in excess of five hours per day.

55. Plaintiff has worked shifts in excess of five hours per day while employed at CKE.

56. General Managers at CKE routinely work shifts in excess of six hours per day.

57. Plaintiff has worked shifts in excess of six hours per day while employed at CKE.

58. General Managers at CKE routinely work shifts in excess of ten hours per day.

1 59. Plaintiff has worked shifts in excess of ten hours per day while
2 employed at CKE.

3
4 60. General Managers at CKE sometimes work shifts in excess of twelve
5 hours per day.

6
7 61. Plaintiff has worked shifts in excess of twelve hours per day while
8 employed at CKE.

9
10 62. Since at least 2005, CKE has maintained a uniform policy with
11 regard to meal and rest breaks at all of its restaurants in California. Under that uniform
12 policy, General Managers are allowed to take legally-required breaks when the store is
13 fully staffed, not busy, and there is no operational need for the General Manager to work
14 through his or her breaks. If the store is busy, short-staffed, or there is any need for the
15 General Manager to work through his or her breaks, Defendant prevents the General
16 Manager from taking meal or rest breaks and the General Manager is required to work
17 without the legally-required break.

18
19 63. As a result of the uniform policy described above, there have been
20 some occasions on which CKE failed to provide a thirty-minute meal break to a General
21 Manager who worked a shift in excess of five hours. This failure to provide breaks has
22 occurred on a regular basis beginning at least in 2005 and continuing to the present day.

23
24 64. As a result of the uniform policy described above, there have also
25 been some occasions on which CKE did provide a thirty-minute meal break to a General
26 Manager who worked more than five hours.

1 65. While employed at CKE, Plaintiff worked some shifts in excess of
2 five hours per day without being allowed to take a meal break. Plaintiff also worked some
3 shifts in excess of five hours in which he was allowed to take a meal break.
4

5 66. As a result of the uniform policy described above, there have been
6 some occasions on which CKE failed to provide a thirty-minute meal break to a General
7 Manager who worked a shift in excess of six hours. This failure to provide breaks has
8 occurred on a regular basis beginning at least in 2005 and continuing to the present day.
9

10 67. As a result of the uniform policy described above, there have also
11 been some occasions on which CKE did provide a thirty-minute meal break to a General
12 Manager who worked more than six hours.
13

14 68. While employed at CKE, Plaintiff worked some shifts in excess of
15 six hours per day without being allowed to take a meal break. Plaintiff also worked some
16 shifts in excess of six hours in which he was allowed to take a meal break.
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18 69. On some occasions, CKE failed to provide a second thirty-minute
19 meal break to a General Manager who worked a shift in excess of ten hours.
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21 70. There have also have been occasions on which CKE provided a
22 second thirty-minute meal break to a General Manager who worked a shift in excess of
23 ten hours.
24

25 71. While employed at CKE, Plaintiff worked some shifts in excess of
26 ten hours per day without being allowed to take a second meal break.
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1 85. Each day that CKE failed to provide a General Manager with all of
2 the meal breaks to which he or she was entitled, CKE was required by Labor Code §226.7
3 to pay that employee an additional hour of pay at the employee's regular rate of
4 compensation.

5
6 86. Each day that CKE failed to authorize and permit a General Manager
7 to take all of the rest breaks to which he or she was entitled, CKE was required by Labor
8 Code §226.7 to pay that employee an additional hour of pay at the employee's regular rate
9 of compensation.

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11 87. At all times relevant hereto, CKE has maintained a uniform policy of
12 refusing to pay wages as required by Labor Code §226.7.

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14 88. At all times relevant hereto, each General Manager including
15 Plaintiff had a vested interest in his or her earned but unpaid wages.

16
17 89. At all times described herein, CKE has been aware that it owes wages
18 to its employees pursuant to Labor Code §226.7, and CKE has actually tracked the
19 amount of money that the company has made by withholding the required payments from
20 its employees.

21
22 90. CKE is guilty of the tort of conversion with regard to each Section
23 226.7 wage payment that the company has withheld from a General Manager.

24
25 91. At all times described herein, CKE has acted willfully and
26 deliberately with oppression, fraud and malice to deprive its employees of the wages to
27 which they are entitled under Labor Code §226.7.
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SIXTH CAUSE OF ACTION

(Class and Representative Claim for Failure to Pay Wages as Required by California Labor Code §204)

92. Plaintiff realleges and incorporates herein by this reference the allegations of paragraphs 1 through 91 hereof, inclusive.

93. Labor Code §204 requires that all wages are due and payable twice in each calendar month.

94. During each pay period since 2005, each General Managers at CKE have earned overtime wages.

95. From at least 2005 until CKE re-classified General Managers in April of 2009, CKE violated Labor Code §204 by refusing to pay the overtime wages due to each of its General Managers.

96. The wages required by Labor Code §226.7 became due and payable to each General manager in each pay period that he or she was not provided with a meal period or a rest period to which he or she was entitled.

97. From at least 2005 and continuing to the present day, CKE has violated Labor Code §204 by refusing to pay wages due under Labor Code §226.7.

SEVENTH CAUSE OF ACTION

(Class and Representative Claim for Failure to Pay Wages as Required by California Labor Code §216)

98. Plaintiff realleges and incorporates herein by this reference the allegations of paragraphs 1 through 97 hereof, inclusive.

1 General Manager in that each statement omitted overtime and Section 226.7 wages earned
2 by the General Manager.

3
4 **NINTH CAUSE OF ACTION**

5 **(Class and Representative Claim for Violation of Labor Code §§201 and 202)**

6 106. Plaintiff realleges and incorporates herein by this reference the
7 allegations of paragraphs 1 through 105 hereof, inclusive.

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9 107. Cubias' employment at CKE ended in October of 2009.

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11 108. At the time his employment ended, CKE did not pay Cubias all of the
12 unpaid wages to which he was entitled.

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14 109. As of the filing of this Complaint, CKE has not paid Cubias all of the
15 earned wages to which he is entitled.

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17 110. Since at least 2005, CKE has willfully failed to pay overtime wages
18 due to each General Manager who was terminated or quit his or her job at CKE.

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20 111. Since at least 2005, CKE has willfully failed to pay Section 226.7
21 wages due to each General Manager who was terminated or quit his or her job at CKE.

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23 **TENTH CAUSE OF ACTION**

24 **(Representative Claim for Violation of Business and**
25 **Professions Code §17200 et seq. Against all Defendants)**

26 112. Plaintiff realleges and incorporates herein by this reference the
27 allegations of paragraphs 1 through 111 hereof, inclusive.

- 1 2. For temporary, preliminary and permanent injunctive relief against Defendants'
- 2 ongoing violations of the Labor Code;
- 3 3. For restitution of unpaid wages;
- 4 4. For disgorgement of Defendants' ill-gotten gains;
- 5 5. For civil penalties pursuant to Labor Code §2699;
- 6 6. For attorney fees and costs reasonably incurred, in accordance with California Labor
- 7 Code §§218.5, 2699, 1194, and California Code of Civil Procedure §1021.5; and
- 8 7. For interest pursuant to Labor Code §218.6 and 1194, and Civil Code §3287.

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10 **ON THE THIRD CAUSE OF ACTION:**

- 11 1. For damages according to proof;
- 12 2. For temporary, preliminary and permanent injunctive relief against Defendants'
- 13 ongoing violations of the Labor Code;
- 14 3. For civil penalties pursuant to Labor Code §§558 and 2699;
- 15 4. For attorney fees and costs reasonably incurred, in accordance with California Labor
- 16 Code §§218.5, 2699, 1194, and California Code of Civil Procedure §1021.5;
- 17 5. For interest pursuant to Labor Code §§218.6 and 1194, and Civil Code §3287; and
- 18 6. For punitive damages.

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20 **ON THE FOURTH CAUSE OF ACTION:**

- 21 1. For damages according to proof;
- 22 2. For temporary, preliminary and permanent injunctive relief against Defendants'
- 23 ongoing violations of the Labor Code;
- 24 3. For civil penalties pursuant to Labor Code Labor Code §§ 1198 and 2699;
- 25 4. For attorney fees and costs reasonably incurred, in accordance with California Labor
- 26 Code §§218.5, 2699, 1194, and California Code of Civil Procedure §1021.5;
- 27 5. For interest pursuant to Labor Code §218.6 and 1194, and Civil Code §3287; and
- 28 6. For punitive damages.

1 **ON THE FIFTH CAUSE OF ACTION:**

- 2 1. For damages according to proof;
- 3 2. For temporary, preliminary and permanent injunctive relief against Defendants'
- 4 ongoing violations of the Labor Code;
- 5 3. For restitution of unpaid wages;
- 6 4. For disgorgement of Defendants' ill-gotten gains;
- 7 5. For unpaid wages pursuant to Labor Code § 226.7;
- 8 6. For attorney fees and costs reasonably incurred, in accordance with California Labor
- 9 Code §§218.5, 2699, 1194, and California Code of Civil Procedure §1021.5;
- 10 7. For interest pursuant to Labor Code §§218.6 and 1194, and Civil Code §3287; and
- 11 8. For punitive damages.

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13 **ON THE SIXTH CAUSE OF ACTION:**

- 14 1. For damages according to proof;
- 15 2. For temporary, preliminary and permanent injunctive relief against Defendants'
- 16 ongoing violations of the Labor Code;
- 17 3. For civil penalties on behalf of current and former Hourly Employees pursuant to
- 18 Labor Code §210;
- 19 4. For attorney fees and costs reasonably incurred, in accordance with California Labor
- 20 Code §§218.5, 2699, 1194, and California Code of Civil Procedure §1021.5; and
- 21 5. For interest pursuant to Labor Code §§218.6 and 1194, and Civil Code §3287.

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23 **ON THE SEVENTH CAUSE OF ACTION:**

- 24 1. For damages according to proof;
- 25 2. For temporary, preliminary and permanent injunctive relief against Defendants'
- 26 ongoing violations of the Labor Code;
- 27 3. For civil penalties pursuant to Labor Code §225.5;

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- 1 4. For attorney fees and costs reasonably incurred, in accordance with California Labor
2 Code §§218.5, 2699, 1194, and California Code of Civil Procedure §1021.5; and
- 3 5. For interest pursuant to Labor Code §§218.6 and 1194, and Civil Code §3287.

4
5 **ON THE EIGHTH CAUSE OF ACTION:**

- 6 1. For damages according to proof;
- 7 2. For temporary, preliminary and permanent injunctive relief against Defendants'
8 ongoing violations of the Labor Code;
- 9 3. For penalties pursuant to Labor Code §226.3;
- 10 4. For attorney fees and costs reasonably incurred, in accordance with California Labor
11 Code §§218.5, 2699, 1194, and California Code of Civil Procedure §1021.5; and
- 12 5. For interest pursuant to Labor Code §218.6 and 1194, and Civil Code §3287.

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14 **ON THE NINTH CAUSE OF ACTION:**

- 15 1. For damages according to proof;
- 16 2. For temporary, preliminary and permanent injunctive relief against Defendants'
17 ongoing violations of the Labor Code;
- 18 3. For waiting time penalties pursuant to Labor Code §203;
- 19 4. For attorney fees and costs reasonably incurred, in accordance with California Labor
20 Code §§218.5, 2699, 1194, and California Code of Civil Procedure §1021.5; and
- 21 5. For interest pursuant to Labor Code §218.6 and 1194, and Civil Code §3287.

22
23 **ON THE TENTH CAUSE OF ACTION:**

- 24 1. For temporary, preliminary and permanent injunctive relief against Defendants'
25 ongoing violations of the Labor Code;
- 26 2. For disgorgement of Defendants' ill-gotten gains and other relief that may be
27 necessary to remedy Defendants' misconduct;
- 28 3. For restitution of payments unlawfully withheld;

- 1 4. For attorney fees and costs reasonably incurred pursuant to California Code of Civil
- 2 Procedure §1021.5; and
- 3 5. For interest pursuant to Civil Code §3287.

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ON ALL CAUSES OF ACTION:

- 6 1. For costs of suit, to the extent not otherwise prayed for above;
- 7 2. For attorney fees to the extent not otherwise prayed for above;
- 8 3. For interest on damages recoverable; and
- 9 4. For such other and further relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

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15 DATED: January 15, 2010

THE GRAVES FIRM
ALLEN GRAVES

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By: 
ALLEN GRAVES

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Attorney for Plaintiff
Jose Cubias

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