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CIVIL BUSINESS OFFICE 7
CENTRAL DIVISION

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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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13 SUPERIOR COURT OF CALIFORNIA
14 COUNTY OF SAN DIEGO

17 MARINA PUCHALSKI and RAJEEV
18 CHHIBBER, individually and on behalf of
19 all others similarly situated,

19 Plaintiffs,

20 v.

22 TACO BELL CORP., a California
23 Corporation, and DOES 1-20, inclusive,

24 Defendants.

Case No.: GIC 870429

BY FAX

Judge: William R. Nevitt
Dept: 64

25 PLAINTIFFS' FIRST AMENDED
26 CLASS ACTION COMPLAINT FOR:

- 27 (1) Violation of California Labor Code for
28 Failure to Pay Overtime Wages
- (2) Violation of Labor Code §226.7
- (3) Violation of Business & Professions
Code §§17200 and 17203

THIS IS A CLASS ACTION LAWSUIT

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1 Plaintiffs, individually and on behalf of all others similarly situated, complain and allege
2 as follows:

3 1. This is a class action brought on behalf of the following classes:

4 CLASS 1: All persons residing in the State of California as of the time of filing this
5 Complaint who, at any time from August 7, 2002, up until the date of entry
6 of judgment after trial, are or were employed at any of the defendant's
7 corporately owned fast food outlets in California as a salaried Restaurant
8 Manager who claim that they were misclassified, and seek to recover
9 overtime pay;

10 CLASS 2: All persons residing in the State of California as of the time of filing this
11 Complaint who, at any time from August 7, 2002, up until the date of entry
12 of judgment after trial, are or were employed at any of the defendant's
13 corporately owned fast food outlets in California as a salaried Restaurant
14 Manager who did not receive an uninterrupted, off-duty thirty (30) minute
15 meal period, for each day in which they worked in excess of five (5) hours.
16

17 The above classes of employees did not receive overtime compensation or their
18 statutorily mandated meal breaks and are similarly situated under California Code of Civil
19 Procedure §382. Plaintiffs seek to recover unpaid overtime compensation, missed meal break
20 wages equivalent to one hour's worth of pay for each missed meal period, penalties, interest,
21 attorney's fees and costs for themselves and all other present and former employees similarly
22 situated. To the extent that the improper conduct alleged herein violates California Business and
23 Professions Code §§17200 and 17203, this action is also brought by the plaintiffs on behalf of
24 others similarly situated.
25

26 **I.**

27 **JURISDICTION AND VENUE**

28 2. This class action is brought pursuant to §382 of the California Code of Civil

1 Procedure. The monetary damages sought by plaintiffs exceed the minimal jurisdictional limits
2 of the Superior Court and will be established according to proof at trial. The monetary damages
3 sought on behalf of each and every member of the class and as aggregate class damages exceed
4 those jurisdictional limits as well.

5
6 3. Venue is proper in the San Diego County Superior Court because plaintiff
7 Puchalski worked for defendant at the Taco Bell outlet on Clairemont Mesa Boulevard in San
8 Diego County and because the defendant owns and operates numerous fast food outlets in San
9 Diego County. The defendant's liability to the plaintiffs arose in San Diego County and many of
10 the wrongful acts complained of occurred in that county.

11
12 4. To the extent any class member entered into any arbitration agreement with any
13 defendant and such agreement purported to require arbitration of wage or employment disputes,
14 any such agreement is and was void and unenforceable. Any such agreement was one of
15 adhesion, was executed under duress, lacked consideration and mutuality, and failed to provide
16 that the defendant(s) would pay the costs of any arbitration, and was otherwise void under the
17 California Supreme Court case of Armendariz v. Foundation Health Psychcare Services, Inc.

18
19 **II.**

20 **NO FEDERAL JURISDICTION EXISTS**

21 5. The class representatives' claims for relief are less than \$75,000 exclusive of
22 interest and costs.

23
24 6. Plaintiffs and defendant are citizens of the State of California. Defendant's
25 corporate headquarters are located in Irvine, California.

26
27 7. No federal jurisdiction exists in this case. This action is brought solely pursuant
28 to California law. There is no federal question at issue, as exempt status questions and

1 remedies relating thereto are based solely on California law and statutes, including the Labor
2 Code and the Business & Professions Code.

3
4 8. The Class Action Fairness Act of 2005 does not apply to this case
5 because:

- 6 a. The claims asserted will be governed solely by the laws of the State of
7 California and no federal law is at issue;
- 8 b. Over two-thirds of the class are citizens of the State of California as of the
9 time of filing, as the class is limited to California citizens only;
- 10 c. The defendant is a citizen of the State of California;
- 11 d. The claims at issue arise in the State of California because the principal
12 injuries resulting from defendant's alleged conduct arise from the class
13 members' employment and defendant's failure to pay wages in the State of
14 California.

15
16 **III.**
17 **PARTIES**

18 9. The defendant Taco Bell Corp., is a California corporation doing business in the
19 State of California with its corporate headquarters located in Irvine, California. Throughout the
20 class period, the defendant operated over forty (40) corporately owned fast food outlets
21 throughout the State of California. Taco Bell's fast food outlets sell tacos, burritos and other fast
22 food items to the California public.

23
24 10. At all times relevant to this Complaint, the wage and hour and all related
25 employee compensation policies of stores in California are and were dictated by, controlled by,
26 and ratified by defendant.

27
28 11. The true names and capacities of defendants named herein as DOES 1 through 20

1 inclusive, whether individual, corporate, associate, or otherwise, are unknown to plaintiff who
2 therefore sues such defendants under fictitious names pursuant to California Code of Civil
3 Procedure §474. Plaintiffs are informed and believe, and thereon allege, that these defendants,
4 DOES 1 through 20, are in some manner or capacity, and to some degree, legally responsible and
5 liable for the wrongs of which plaintiffs complain. Plaintiffs will amend their Complaint to
6 allege the true names and capacities of these DOE defendants once they are ascertained. On
7 information and belief, plaintiffs make all allegations contained in this complaint against all
8 defendants, including DOES 1 through 20, inclusive.

9
10 12. At all times herein mentioned, each defendant was an agent, servant, employee
11 and/or joint venturer of each of the remaining defendants, and was at all times acting within the
12 course and scope of such agency, service, employment, and/or joint venture, and each defendant
13 has ratified, approved, and authorized the acts of each of the remaining defendants with full
14 knowledge of said acts.

15
16 13. Plaintiff Marina Puchalski is a former employee of defendant. Ms.
17 Puchalski began working at the corporately owned Taco Bell fast food outlet located on
18 Clairemont Mesa Boulevard in San Diego as a salaried Restaurant Manager in approximately
19 August 2002. During her tenure with Taco Bell, Ms. Puchalski also worked at three other
20 corporately owned Taco Bell fast food outlets located throughout San Diego as a salaried
21 Restaurant Manager. Ms. Puchalski resigned from her employment with Taco Bell in
22 approximately January 2004.

23
24 14. The named plaintiffs and every other salaried Restaurant Manager
25 employed by defendant at a corporately owned location in California are/ were routinely
26 required to work in excess of eight (8) hours a day and/or forty (40) hours per week without
27 receiving overtime compensation.

1 procedures. Salaried Restaurant Managers do not and have not exercised independent judgment
2 or discretion and have been disciplined for deviating from the detailed company guidelines of
3 how the fast food outlets are to be operated.

4
5 20. Salaried Restaurant Managers working at Taco Bell's fast food outlets in
6 California have spent and consistently spend more than fifty percent (50%) of their working
7 hours performing non-managerial tasks. The majority of their time has been and is spent
8 working on the line, side by side with hourly employees. The majority of their time is spent not
9 in supervision or other managerial activity, but rather performing non-managerial activities that
10 include, but are not limited to:

- 11 a. greeting and waiting on customers;
- 12 b. preparing food;
- 13 c. cashiering;
- 14 d. cooking food;
- 15 e. assembling and wrapping food items for sale to customers;
- 16 f. maintaining the premises and performing cleaning work on the premises;
- 17 g. unloading deliveries;
- 18 h. counting the cash drawer;
- 19 i. performing physical inventories;
- 20 j. filling in for workers who are out due to illness or vacation; and
- 21 k. covering breaks and lunches taken by hourly employees.

22 Salaried Restaurant Managers are also required to perform other non-managerial activities such
23 as opening and closing the fast food outlets and making bank deposits. As a result, managers
24 have consistently not been primarily engaged in performing exempt work as defined by IWC
25 Wage Orders.

26
27 21. Labor Code §1174(d) and the IWC Orders (Section 5) provide that every
28 employer shall keep accurate information with respect to each employee including time records

1 showing when the employee begins and ends each work period. When an employer fails to keep
2 such time records, employees may establish the hours worked solely by their testimony and the
3 burden of overcoming such testimony shifts to the employer. Hernandez v. Mendoza (1988) 199
4 Cal.App.3d 721, 245 Cal.Rptr. 36.

5
6 22. Some evidence generally reflecting the number of overtime hours worked by each
7 employee and the compensation rates for the relevant work periods are in the possession of
8 defendant. While plaintiffs are unable to state at this time the exact amount owing to the class,
9 plaintiffs propose to obtain such information by appropriate and focused discovery proceedings
10 to be taken promptly in this action, and request that damages or restitution be awarded
11 accordingly to proof thus obtained and presented to the Court.

12 V.

13 **CLASS ACTION ALLEGATIONS**

14 23. Plaintiffs bring this action individually and as a class action on behalf of the
15 following classes:

16 CLASS 1: All persons residing in the state of California as of
17 the time of filing this Complaint who, at any time
18 from August 7, 2002, up until the date of entry of
19 judgment after trial, are or were employed at any of
20 the defendant's corporately owned fast food outlets
in California as a salaried Restaurant Manager who
claim that they were misclassified, and seek to
recover overtime pay;

21 CLASS 2: All persons residing in the State of California as of the time of
22 filing this Complaint who, at any time from August 7, 2002, up
23 until the date of entry of judgment after trial, are or were employed
24 at any of the defendant's corporately owned fast food outlets in
California as a salaried Restaurant Manager who did not receive an
uninterrupted, off-duty thirty (30) minute meal period, for each day
in which they worked in excess of five (5) hours.

25 24. Plaintiffs' claims are typical of the claims of the class because plaintiffs and all
26 the class members were harmed by defendant's failure to pay overtime and failure to provide
27 meal breaks as required by California law. Defendant's policies with respect to the hours worked
28 are and were uniform throughout California and the stores operated under uniform written

1 procedures.

2
3 25. Plaintiffs are representative parties who will fully and adequately protect the
4 interests of the class members. They have retained counsel who are competent in both class
5 action and employment litigation. Plaintiffs have no interests which are contrary to or in conflict
6 with those of the class they seek to represent.

7
8 26. The number of class members is believed to exceed one hundred (100)
9 individuals, which makes it impractical to bring all members of the class individually before the
10 Court, and the identities of the members of the class are determinable from the records of the
11 defendant, as are the days worked and the regular rate of pay for each class member.

12
13 27. A class action is superior to other available means for the fair and efficient
14 adjudication of this lawsuit. Even if any class member could afford individual litigation against
15 a large business like Taco Bell, it would be unduly burdensome to the court system. Individual
16 litigation magnifies the delay and expense to all parties. By contrast, a class action presents far
17 fewer management difficulties and affords the benefits of unitary adjudication, economies of
18 scale, and comprehensive supervision by a single court. Concentrating this litigation in one
19 forum will promote judicial economy and parity among the claims of individual class members
20 and judicial consistency. Notice of the pendency and any resolution of this action can be
21 provided to class members by mail, print, broadcast, internet, and/or multimedia publication.

22
23 28. This type of case is uniquely well-suited for class treatment since the employer's
24 practices were uniform and the burden is on the employer to prove any exemption.

25
26 29. Many issues of law or fact are common and they predominate over any individual
27 questions. These common issues include:

28 a. Whether defendant's salaried Restaurant Managers were uniformly classified as

- 1 exempt, in violation of California Labor Code and applicable IWC wage orders;
- 2 b. Whether defendant failed to pay plaintiffs and class members all overtime
- 3 compensation due to them by virtue of its uniform designation of employees as
- 4 exempt in violation of California Labor Code and applicable IWC wage orders;
- 5 c. Whether plaintiffs and class members were expected to and/or mandated to
- 6 regularly work overtime;
- 7 d. Whether the purportedly exempt position of salaried Restaurant Manager
- 8 realistically required class members to be primarily engaged in non-management
- 9 work;
- 10 e. Whether the defendant failed to pay plaintiffs and class members meal break
- 11 wages in violation of California Labor Code §226.7;
- 12 f. The correct statute of limitations for plaintiffs' and class members' claims;
- 13 g. The correct method of calculating back overtime pay;
- 14 h. Whether defendant's conduct constitutes unfair competition within the meaning of
- 15 California Business & Professions Code §§17200 and 17203;
- 16 i. Whether defendant's conduct constitutes unfair business practices within the
- 17 meaning of California Business & Professions Code §§17200 and 17203;
- 18 j. Whether plaintiffs and class members are entitled to injunctive relief prohibiting
- 19 defendants from requiring managers who do not meet the statutory and regulatory
- 20 guidelines for exemption from working more than eight (8) hours per day or forty
- 21 (40) hours a week in any work week without pay for overtime wages;
- 22 k. Whether plaintiffs and class members are entitled to restitution;
- 23 l. Whether defendant is liable for pre-judgment interest;
- 24 m. Whether defendant is liable for attorney's fees and costs; and
- 25 n. Whether plaintiffs and class members are entitled to waiting time penalties.

26 **VI.**

27 **GENERAL ALLEGATIONS**

28 **AS TO CLASS REPRESENTATIVE**

30. During the class period, plaintiffs were employed by defendant as salaried Restaurant Managers in California and were classified "salaried exempt." Plaintiffs regularly worked more than 8 hours per day and in excess of 40 hours a week without payment of overtime wages.

31. During their employment by defendant, plaintiffs spent over fifty percent (50%) of

1 their working hours performing the duties of non-exempt employees. These duties included, but
2 were not limited to: greeting and waiting on customers; preparing food; cashiering; cooking
3 food; assembling and wrapping food items for sale to customers; maintaining the premises and
4 performing cleaning work on the premises; unloading deliveries; counting the cash drawer;
5 performing physical inventories; filling in for workers who are out due to illness or vacation;
6 and covering breaks and lunches taken by hourly employees.

7
8 32. At all times during their employment by Taco Bell, plaintiffs spent far less than
9 fifty percent (50%) of their workweek and/or working hours performing work which was
10 primarily intellectual, managerial, creative, or which required the regular and customary exercise
11 of discretion and independent judgment. The majority of their working hours was spent engaged
12 in non-managerial, non-exempt activities.

13
14 33. Due to chronic understaffing and tight restrictions placed on labor by defendant,
15 plaintiffs rarely had time to take an uninterrupted, thirty (30) minute meal period, when working
16 shifts in excess of five (5) hours in duration.

17
18 **VII.**

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY OVERTIME WAGES**

21 **Violation of California Labor Code §§ 203, 510, 1194 and 1198**

22 **(As Against All Defendants)**

23 34. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
24 though fully set forth in detail herein.

25
26 35. California Labor Code §510 defines a day's work as 8 hours and states that any
27 work in excess of 8 hours in one workday and any work in excess of 40 hours in any one
28 workweek must be compensated at the rate of no less than one and one-half times the regular rate

1 of pay.

2
3 36. Pursuant to California Labor Code §1194(a), a plaintiff may bring a
4 civil action for overtime wages directly against the employer without first filing a claim with the
5 Division of Labor Standards Enforcement (hereinafter "DLSE") and may recover such wages,
6 together with interest thereon, penalties, attorney's fees and costs.

7
8 37. Pursuant to California Labor Code §1198, it is unlawful to employ persons for
9 longer than the hours set by the IWC or under conditions prohibited by the applicable IWC Wage
10 Orders. IWC Wage Order No. 5 applies to plaintiffs' employment. It provides for payment of
11 overtime wages equal to one and one-half times an employee's regular rate of pay for all hours
12 worked in excess of 8 hours in a day or 40 hours in a work week or, in certain circumstances, two
13 times an employee's regular rate of pay.

14
15 38. At all times relevant hereto, Taco Bell treated plaintiffs and others similarly
16 situated as "salaried exempt" employees and as "bona fide executives" exempt from the
17 protections of the California Labor Code.

18
19 39. In California, all employees are presumed to be non-exempt and all exemptions
20 are narrowly construed against the employer. Ramirez v. Yosemite Water Co., Inc. (1999) 20
21 Cal.4th 785; Nordquist v. McGraw-Hill Broadcasting Co. (1995) 32 Cal.App.4th 555.

22
23 40. Taco Bell improperly misclassified its salaried Restaurant Managers as exempt
24 from California's overtime laws. Taco Bell did so despite the fact that its salaried Restaurant
25 Managers did not meet the exemption criteria because, among other things, those managers were
26 not:

- 27 a. Primarily engaged in the management of the enterprise in which they are/were
28 employed or of a customarily recognized department or subdivision thereof; and

- 1 b. Customarily and regularly directing the work of at least two other full-time
2 employees or the equivalent; and
- 3 c. Granted the authority to hire or fire other employees, or to command particularly
4 serious attention to their recommendations on such actions; and
- 5 d. Customarily and regularly exercising discretion and independent judgment in the
6 performance of their duties; and
- 7 e. Spending less than fifty percent (50%) of their worktime “engaged in” non-
8 managerial work.

9

10 41. Plaintiffs and other salaried Restaurant Managers are and were expected to work
11 in excess of 8 hours in a day and/or 40 hours in a week. Salaried Restaurant Managers averaged
12 50 or more hours or more per week to maintain the restaurants in the condition expected by Taco
13 Bell and to maintain the sales expected and demanded by Taco Bell.

14

15 42. As a uniform practice, Taco Bell failed to keep the records of hours worked by its
16 employees as required by California’s wage orders. However, records of the rates of pay for
17 plaintiff and the class members are in the possession or within the custody and control of Taco
18 Bell.

19

20 43. Taco Bell owes plaintiffs and the class overtime wages according to proof at the
21 time of trial. Plaintiffs are informed and believe, and thereon allege, that Taco Bell knew or
22 should have known that the salaried Restaurant Managers did not qualify as exempt employees
23 and purposely elected not to pay them for their overtime labor. Plaintiffs, individually and on
24 behalf of all employees similarly situated, requests recovery of overtime compensation according
25 to proof, penalty wages, interest, attorney's fees and costs pursuant to Labor Code §§203 and
26 1194(a), as well as the assessment of any other statutory penalties, including waiting time
27 penalties, against Taco Bell in a sum as provided by the Labor Code and/or other statutes.

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VIII.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL BREAKS

Violation of California Labor Code §226.7

44. Plaintiffs hereby re-allege and incorporate by reference the allegations contained in the preceding paragraphs of the Complaint.

45. California Labor Code § 226.7 requires an employer to pay an additional hours worth of pay for each period in which an off-duty meal period is not provided. Pursuant to IWC Wage Order No. 5, employees are entitled to an off-duty meal period of at least thirty (30) minutes in duration during each shift in excess of five (5) hours in duration.

46. During the class period, defendant failed to provide plaintiffs and the class members with off-duty thirty (30) minute meal periods as required under Wage Order 5 and Labor Code §226.7.

47. Pursuant to Labor Code §226.7, plaintiffs and the class members are entitled to damages in an amount equal to one (1) hour of wages for every missed meal period, including interest, in an amount to be proved at trial.

IX.

THIRD CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE §§17200 and 17203

(As Against All Defendants)

48. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth in detail herein.

49. Since August 7, 2002, Taco Bell has engaged and continues to engage in unfair and/or unlawful business acts and practices in violation of California Business & Professions

1 Code §§17200 and 17203. These acts and practices constitute a continuing and ongoing unfair
2 and/or unlawful business activity defined by Business & Professions Code §17200, and justify
3 the issuance of an injunction, restitution, and other equitable relief pursuant to Business &
4 Professions Code §17203.

5
6 50. Taco Bell has unlawfully designated Restaurant Managers as "exempt" employees
7 to avoid the payment of overtime wages and other benefits in violation of Labor Code §500 et
8 seq., Labor Code §1100 et seq., the California Code of Regulations, and the guidelines set forth
9 by the IWC.

10
11 51. The conduct of Taco Bell is inimical to the public welfare since it transgresses
12 civil statutes of this state designed to protect workers from exploitation.

13
14 52. Taco Bell's conduct in misclassifying plaintiffs and other members of the class
15 and failing to pay overtime was unfair within the meaning of §17200 because it was against
16 established public policy and has been pursued to attain an unjustified monetary advantage for
17 Taco Bell by creating personal disadvantage and hardship to its employees. As such, Taco Bell's
18 business practices and acts have been immoral, unethical, oppressive and unscrupulous.

19
20 53. By and through its unfair and/or unlawful business practices and acts described
21 herein, Taco Bell has obtained valuable services from plaintiffs and all persons similarly situated
22 and has deprived plaintiffs and all persons similarly situated of valuable rights and benefits
23 guaranteed by law, all to their detriment.


24
25 54. Plaintiffs, and all persons similarly situated, and all persons in interest, are entitled
26 to and do seek such relief as may be necessary to restore to them the money and property which
27 Taco Bell has acquired, or of which plaintiffs and class members have been deprived by means
28 of the herein described unfair and/or unlawful business practices.

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55. Plaintiffs, and all persons similarly situated, and all persons in interest, are further entitled to and do seek a declaration that the above described business practices are unfair and unlawful, and injunctive relief restraining Taco Bell from engaging in any of the herein described unfair and/or unlawful business practices at all times in the future.

Dated: August 28, 2006

MCINERNEY & JONES

By: 

Charles A. Jones, Esq.
Attorneys for Plaintiff Puchalski