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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TIM ALDERS,

Plaintiff,

v.

YUM! Brands, Inc.; TACO BELL  
CORP.; and DOES 1 through 20,

Defendants.

CASE NO. 8:21-cv-1191

COMPLAINT FOR ACTIONS  
ARISING UNDER THE EMPLOYEE  
RETIREMENT INCOME SECURITY  
ACT AND RELATED STATE LAW  
ACTIONS

Plaintiff Tim Alders (“Plaintiff”), in his individual capacity, by and through his undersigned counsel, files this Complaint against Defendants YUM! Brands, Inc. (hereinafter “YUM”), Taco Bell Corp. (“Taco Bell”), and DOES 1-20 (the aforementioned defendants are collectively referred to herein as “Defendants”) as follows:

**INTRODUCTION**

1. Plaintiff brings this action for declaratory relief and benefits pursuant to Section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1132(a)(1)(B), and appropriate equitable relief pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3).



1 within this Complaint are so related that they comprise one case, and all claims  
2 and causes of action arise from the same operative facts.

3 8. **Venue.** Venue is proper in this district pursuant to 29 U.S.C. §  
4 1132(e)(2) because the breaches took place in this judicial district; to wit, the  
5 Defendants failed to properly classify Plaintiff in this district as a “employee” and  
6 refused to extend to him ERISA benefits despite his employment in this district.  
7 Venue is further proper in this district because at least one of the defendants may  
8 be found within this district.

9 **PARTIES**

10 9. Plaintiff is 63 years old. He resides in Orange, California. During the  
11 relevant time period, Plaintiff was a participant, as defined by ERISA § 3(7), 29  
12 U.S.C. § 1002(7), in the YUM Plans.

13 10. Defendant YUM was incorporated under the laws of the State of  
14 North Carolina in 1997. The principal executive offices of YUM are located at  
15 1441 Gardiner Lane, Louisville, KY 40213. YUM conducts business throughout  
16 the State of California including the district where the action is filed.

17 11. Defendant Taco Bell is a California corporation with its principal  
18 place of business located at 1 Glen Bell Way, Irvine, California 92618. Taco Bell  
19 is a wholly owned subsidiary of YUM. Taco Bell conducts business throughout  
20 the State of California including the district where the action is filed.

21 12. Does 1 through 20 are fictitiously named defendants whose true  
22 names and identities have not yet been ascertained, but who, upon information and  
23 belief, are in some way responsible for the harm alleged by Plaintiff in this  
24 Complaint. Once such defendants have been properly identified, Plaintiff will  
25 request leave of the Court to amend this Complaint in order to incorporate these  
26 defendants using their true names and identities.

27 **THE RETIREMENT PLANS**

28 13. On information and belief, the Salaried Plan is, and has been at all

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1 relevant times, an employee pension benefit plan within the meaning of ERISA  
2 3(2), 29 U.S.C. 1002(2). On information and belief, the Salaried Plan is both  
3 sponsored and administered by YUM. At all relevant times, YUM was a fiduciary  
4 of the Salaried Plan under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). The  
5 Salaried Plan was previously known as the Tricon Salaried Employees Retirement  
6 Plan and the Tricon Retirement Plan.

7 14. On information and belief, the PEP is, and has been at all relevant  
8 times, an excess benefit plan within the meaning of ERISA 3(36), 29 U.S.C. §  
9 1002(36). On information and belief, prior to September 1, 2004, the PEP was  
10 known as the Tricon Pension Equalization Plan. On information and belief, from  
11 September 1, 2004, to present, YUM has been the plan sponsor and plan  
12 administrator of the PEP. At all relevant times, YUM was a fiduciary of the PEP  
13 under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). On information and belief, the  
14 PEP provides benefits for eligible employees whose pension benefits under the  
15 Salaried Plan are limited by the provisions of the Internal Revenue Code of 1986,  
16 as amended.

17 **FACTUAL BACKGROUND**

18 15. Plaintiff incorporates by reference the above paragraphs as though  
19 they were fully set forth herein.

20 **YUM! Brands History**

21 16. PepsiCo acquired Pizza Hut, Taco Bell, and KFC in 1977, 1978, and  
22 1986, respectively.

23 17. YUM was created on May 30, 1997, as Tricon Global Restaurants,  
24 Inc., as a result of a spin-out of the former fast-food division of PepsiCo, which  
25 owned and franchised the KFC, Pizza Hut, and Taco Bell brands worldwide.

26 18. In 2002, Tricon Global Restaurants, Inc. merged with Yorkshire  
27 Global Restaurants, owner of the Long John Silver’s and A&W Restaurants  
28 chains, to form YUM! Brands, Inc.

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1 19. YUM currently operates quick-service restaurant systems throughout  
2 the United States including KFC, Pizza Hut, Taco Bell, The Habit Burger Grill,  
3 and Wingstreet (referred to herein as “YUM Owned Brands”).

4 20. YUM is one of the world’s largest fast food restaurant companies in  
5 terms of system units.

6 21. YUM is a publicly traded company on the New York Stock Exchange  
7 under the ticker symbol “YUM”.

8 22. On information and belief, YUM is the alter ego of YUM Owned  
9 Brands and essentially are extensions of each other and jointly responsible for the  
10 liabilities of each other.

11 **Plaintiff’s Employment History**

12 23. The employee relationship began in 1995 when Plaintiff agreed to a  
13 position as a recruiter for Taco Bell at the time in which the company was owned  
14 by PepsiCo.

15 24. Plaintiff was tasked with building an internal executive search and  
16 retention practice within the company.

17 25. In 1997, KFC, Taco Bell, and Pizza Hut were spun away from  
18 PepsiCo’s fast-food division and moving forward were operated under Tricon  
19 Global Restaurants, Inc.

20 26. After the spin-off, Plaintiff began working for Tricon Global  
21 Restaurants, Inc., and eventually YUM after it was established in 2002, bringing  
22 with him and continuing to build on his already established internal executive  
23 search and retention practice.

24 27. From 2002 through December 31, 2020, Plaintiff worked for YUM  
25 and performed services for YUM Owned Brands. During his tenure, Plaintiff was  
26 compensated by YUM and/or YUM Owned Brands.

27 28. During his 25 years of employment, Plaintiff held the title of  
28 Executive Recruiter.

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1           29. As an Executive Recruiter, Plaintiff performed a variety of duties  
2 including, but not limited to, the following:

3           (a) Locating talented individuals to fill employee positions at  
4 YUM and/or YUM Owned Brands in the areas of Information Technology,  
5 Marketing, Finance, Human Resources, Operations, Research and Development,  
6 and Communications;

7           (b) Finding and filling Director positions all the way up to C level  
8 (COO, CFO, etc.) positions at YUM and YUM Owned Brands;

9           (c) Working daily with cross functional leaders and leadership  
10 team members and his direct subordinates to address current search activity  
11 concerning organization structure and future executive level needs across YUM  
12 and YUM Owned Brands;

13           (d) Teaching other employees of YUM and YUM Owned Brands  
14 how to effectively recruit and retain potential talent including drafting corporate  
15 materials on the topic and presenting the materials to YUM employees;

16           (e) Actively participating in and attending YUM organization-  
17 wide events that included social, monthly organizational updates, off-site team  
18 building exercises, and weekly staff meetings;

19           (f) Building and leading a research team in support of all YUM  
20 Owned Brands as well as YUM itself in filling positions across the United States  
21 and internationally;

22           (g) Speaking at YUM corporate events in front of large audiences  
23 of YUM employees on various recruiting and researching topics; and

24           (h) Traveling to YUM Owned Brands' corporate offices in  
25 Louisville, Kentucky and Dallas, Texas, to participate in various meetings and  
26 coach the local recruiters and research professionals.

27           30. The above services rendered by Plaintiff were an integral part of  
28 YUM's business that Plaintiff performed for twenty-five years. During his long-

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1 tenured career, Plaintiff was regularly recognized for his accomplishments and  
2 was the recipient of various YUM company awards.

3 31. Plaintiff was so deeply involved with YUM and YUM Owned Brands  
4 that over the many years of service, Plaintiff became a cultural center piece due to  
5 the way he led with enthusiasm, caring for others, and making sure that everyone  
6 enjoyed each day through levity. For example, Taco Bell created what is called the  
7 annual “Tim Calendar” as well as the “Tim Pillow”, “Tim Socks” and “Tim Drink  
8 Holder”.

9 32. During the relevant time period, YUM classified Plaintiff as an  
10 independent contractor, not an employee.

11 33. At all times during which YUM intentionally misclassified Plaintiff  
12 as an independent contractor, YUM controlled both the work performed and the  
13 manner and means in which Plaintiff performed his work in the following ways:

14 (a) YUM directed when, where, and how Plaintiff’s work was to  
15 be done.

16 (b) Plaintiff did not maintain his own work facilities. Instead, from  
17 1995 through January 2021, Plaintiff was provided his own private office and was  
18 required to work at Taco Bell’s Corporate Office Headquarters located in Irvine,  
19 California. Plaintiff’s employment with YUM was continuous during this time  
20 period.

21 (c) YUM strictly directed Plaintiff’s hours and days off. For  
22 example, Plaintiff was expected to and did in fact arrive to his office by 8 a.m. and  
23 would work until at least 6:00 p.m. (often later). Plaintiff was also required to be  
24 available to YUM beyond the normal 8 a.m. to 6:00 p.m. workday including being  
25 available on weekends. Plaintiff regularly worked in excess of 40 hours per week.

26 (d) Plaintiff was required to log into YUM’s corporate computer  
27 system every morning and was directed to utilize the computer system to conduct  
28 all of his work.

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1 (e) Plaintiff reported directly to senior HR leadership team  
2 members for YUM and YUM Owned Brands.

3 (f) Plaintiff also reported directly to the chief talent officer for  
4 YUM.

5 (g) YUM dictated the specific order and sequence of work  
6 performed by Plaintiff in accordance with YUM’s company policy.

7 (h) YUM assigned, directed, supervised, and controlled the  
8 employee recruitment services performed by Plaintiff.

9 (i) Plaintiff was provided a YUM corporate email address  
10 ([plaintiff@YUM.com](mailto:plaintiff@YUM.com)) and a Taco Bell email address ([plaintiff@tacobell.com](mailto:plaintiff@tacobell.com)).  
11 Plaintiff was required to use these two email addresses to provide all services to  
12 YUM and YUM Owned Brands during Plaintiff’s employment.

13 (j) YUM paid for and/or provided Plaintiff’s office, office  
14 supplies, work computer, and laptop. Plaintiff was not responsible for paying for  
15 any of his office supplies.

16 (k) YUM paid for all of Plaintiff’s business-related travel, which  
17 was frequent. Plaintiff would routinely visit YUM Owned Brands’ corporate  
18 campuses located in Louisville and Dallas.

19 (l) Plaintiff was required to attend YUM employee-only events  
20 and meetings including those discussing highly confidential corporate matters.

21 (m) YUM conducted annual performance evaluations of Plaintiff  
22 which were linked to Plaintiff’s annual salary and bonus determinations.

23 (n) YUM required Plaintiff to complete annual employee training  
24 on the topics of professional behaviors in the workplace (harassment) and  
25 computer security. Plaintiff had to complete questions following the training and  
26 would not be allowed to continue working until after the training and questions  
27 were completed in a satisfactory manner.

28 34. During the entire time he worked as a common law employee for



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1 YUM and YUM Owned Brands, Plaintiff was misclassified as an independent  
2 contractor.

3 35. Upon information and belief, other similarly situated YUM  
4 employees received salaries, bonuses, and employees benefits such as pensions,  
5 vacation pay, and health insurance. However, Plaintiff was only compensated on  
6 a monthly basis as an independent contractor and received no other employee  
7 benefits although he was treated as an employee for all other purposes.

8 36. Unlike other similarly situated YUM employees, Plaintiff did not  
9 receive paid holidays or paid time off during his tenure at YUM.

10 37. Although he was classified by YUM as an independent contractor,  
11 Plaintiff was prohibited from taking on outside work to perform similar services  
12 for other quick service or fast-food businesses.

13 38. As a result, stripped of all the legal fictions and artificial barriers to  
14 an honest classification of the relationship between Plaintiff and YUM, Plaintiff  
15 was an employee of YUM, not an independent contractor.

16 **Plaintiff Was Improperly Excluded From Participation in the YUM Plans**

17 39. Upon information and belief, YUM provides generous employee  
18 benefits to current employees through the YUM Plans.

19 40. Upon information and belief, employees who were employed by  
20 YUM or a YUM Owned Brand were eligible to participate in the YUM Plans.

21 41. Upon information and belief, all YUM or YUM Owned Brand  
22 employees are eligible to participate in the Salaried Plan so long as they satisfy  
23 applicable age and length-of-service requirements.

24 42. In addition, certain management level employees of YUM are also  
25 eligible to participate in the PEP, and the EID.

26 43. Plaintiff, had he been properly recognized as a common law  
27 employee during his term of service, would have been a Participant in each of the  
28 YUM Plans and therefore has claims for vested benefits.

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1           44. As a result of the misclassification of Plaintiff as an independent  
2 contractor, Plaintiff was deprived of the rights and protections guaranteed by state  
3 and federal law to common law employees, including rights under ERISA.

4           45. Specifically, by their mischaracterization of Plaintiff as an  
5 “independent contractor”, Defendants have excluded Plaintiff from the definition  
6 of “employee” covered by the YUM Plans and eligible to participate in the YUM  
7 Plans, thereby denying Plaintiff benefits he is entitled to receive.

8           **It is Futile For Plaintiff To Exhaust Administrative Remedies, If Any**

9           46. On April 12, 2021, Plaintiff sent certified letters to the plan  
10 administrator of the Salaried Plan, the PEP, and the EID requesting: (a) a copy of  
11 each plan’s plan document (including all amendments); (b) a copy of each plan’s  
12 trust agreement; (c) a copy of each plan’s summary plan description.

13           47. Plaintiff did not receive a response whatsoever to his written request  
14 for plan documents made to the PEP or the EID. Without access to the plan  
15 documents, Plaintiff is unaware of any benefit claim procedures currently in place.  
16 As such, the exhaustion requirement is believed to be futile here as to the PEP and  
17 EID based on YUM’s failure to even respond to Plaintiff’s request for plan  
18 documents.

19           48. On April 22, 2021, YUM responded via letter to Plaintiff’s written  
20 request seeking documents pertaining to the Salaried Plan. In the letter, YUM  
21 requested certain information from Plaintiff to verify his identity and entitlement  
22 to benefits.

23           49. On May 31, 2021, Plaintiff sent YUM a certified letter and email  
24 requesting a copy of his “benefit statement” for the Salaried Plan and PEP.

25           50. On June 2, 2021, YUM responded by requesting Plaintiff’s Social  
26 Security Number and date of birth.

27           51. On June 2, 2021, Plaintiff provided YUM with the requested  
28 information verifying his identity.



1 and Plaintiff’s rights thereunder.

2 59. As a common law employee of YUM, Plaintiff was eligible to  
3 participate in the PEP and the Salaried Plan.

4 60. YUM misclassified Plaintiff as an independent contractor instead of  
5 an employee thus depriving him of employee benefits to which he was entitled.

6 61. Plaintiff seeks the relief as prayed for below.

7 **SECOND CLAIM FOR RELIEF**

8 **[Claim for Benefits Pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. §**  
9 **1132(a)(1)(B)]**

10 **(By the Plaintiff against All Defendants)**

11 62. Plaintiff incorporates by reference the above paragraphs as though  
12 they were fully set forth herein.

13 63. ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), permits a plan  
14 participant to bring a civil action to recover benefits due him under the terms of a  
15 plan, to enforce his rights under the terms of the plan, and/or to clarify his right to  
16 future benefits under the terms of the plan.

17 64. The terms of the Salaried Plan and the PEP provide that Plaintiff, as  
18 a common law employee of YUM, accrued pension service credits during the times  
19 he was misclassified as an independent contractor.

20 65. Plaintiff seeks the relief as prayed for below.

21 **THIRD CLAIM FOR RELIEF**

22 **[Claim for Appropriate Equitable Relief Pursuant to ERISA § 502(a)(3), 29**  
23 **U.S.C. § 1132(a)(3)]**

24 **(By the Plaintiff against Defendants)**

25 66. Plaintiff incorporates by reference the above paragraphs as though  
26 they were fully set forth herein.

27 67. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a plan  
28 participant to bring a civil action (A) to enjoin any act or practice which violates

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1 any provision of ERISA or the terms of the plan, or (B) to obtain other appropriate  
2 equitable relief (i) to redress violations of ERISA or the terms of the plan or (ii) to  
3 enforce any provisions of ERISA or the terms of the plan.

4 68. ERISA § 209(a)(1), 29 U.S.C. § 1059(a)(1), requires that an employer  
5 which sponsors an employee benefit plan maintain records with respect to each of  
6 its employees sufficient to determine the benefits due or which may become due  
7 to the employees.

8 69. Pursuant to the terms of the PEP and Salaried Plan, a participant’s  
9 vested and accrued pension benefit is dependent on his or her years of service.

10 70. Defendants misclassified Plaintiff as an independent contractor  
11 during the relevant years.

12 71. Defendants have not maintained records of hours of service or years  
13 of service with respect to Plaintiff.

14 72. By its failure to record service credits for misclassified common law  
15 employees like Plaintiff, Defendants have failed to maintain records with respect  
16 to Plaintiff sufficient to determine the benefits due or which may become due to  
17 Plaintiff in violation of ERISA § 209(a)(1), 29 U.S.C. § 1059(a)(1).

18 73. To remedy these violations of ERISA by Defendants, Plaintiff seeks  
19 the injunctive relief and other equitable relief as prayed for below.

20 **FOURTH CLAIM FOR RELIEF**

21 **[Supplemental State Claim – Breach of Contract]**

22 **(By the Plaintiff against All Defendants)**

23 74. Plaintiff incorporates by reference the above paragraphs as though  
24 they were fully set forth herein.

25 75. On information and belief, YUM established the EID in 1997 to  
26 permit eligible executives to defer compensation and other awards under its  
27 executive compensation programs.

28 76. On information and belief, the EID is intended to be a nonqualified

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1 deferred compensation plan that is unfunded and unsecured.

2 77. On information and belief, YUM established the EID allowing  
3 common law employees to defer the receipt of a portion of their income and  
4 bonuses.

5 78. On information and belief, the EID allows participants to defer up to  
6 85% of their base salary and 100% of their bonus.

7 79. 67. On information and belief, the EID allows participants to defer  
8 all or a portion of their eligible incentive bonus into the YUM Matching Stock  
9 Fund.

10 80. On information and belief, deferrals into the YUM Matching Stock  
11 Fund are invested in phantom YUM! Common Stock and participants receive  
12 additional phantom shares equal to 33 1/3% of the phantom shares received as a  
13 result of the participant’s deferral.

14 81. On information and belief, all directors and executive level  
15 employees at YUM eligible to receive an annual incentive are eligible to  
16 participate in the EID.

17 82. Although Plaintiff worked as an Executive Recruiter and received an  
18 annual incentive from YUM, Plaintiff was not allowed or invited to participate in  
19 the EID.

20 83. The terms of the EID provide that Plaintiff, as an executive level  
21 common law employee of YUM, should have been permitted to participate in the  
22 EID program.

23 84. YUM breached the terms of the EID by not providing Plaintiff with  
24 an opportunity to participate in the EID.

25 85. YUM was the proximate cause of Plaintiff being unable to participate  
26 in the EID as YUM controlled which employees were invited to participate in the  
27 program and YUM misclassified Plaintiff as an independent contractor.

28 86. Plaintiff was damaged by not being permitted to participate in the EID

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1 to the extent he was unable to defer his compensation and reduce his potential tax  
2 exposure based on his income.

3 87. Plaintiff was further damaged by not being able to defer any of his  
4 incentive bonus into the YUM Matching Stock Fund and thereby receive  
5 additional phantom shares.

6 88. Plaintiff seeks the relief as prayed for below.

7 **FIFTH CLAIM FOR RELIEF**

8 **[Supplemental State Claim - Violation of California Labor Code §§ 201-**  
9 **203— Failure to Pay All Wages and on a Timely Basis]**

10 **(By the Plaintiff against All Defendants)**

11 89. In misclassifying Plaintiff as an “independent contractor,”  
12 Defendants failed to pay required employer-side payroll taxes, passing off this  
13 expense to Plaintiff in the form of self-employment taxes. This violates the Federal  
14 Insurance Contributions Act (“FICA”).

15 90. Further, Section 6672(a) of the United States Code provides:

16 Any person required to collect, truthfully account for, and  
17 pay over any tax imposed by this title who willfully fails  
18 to collect such tax, or truthfully account for and pay over  
19 such tax, or willfully attempts in any manner to evade or  
20 defeat any such tax or the payment thereof, shall, in  
21 addition to other penalties provided by law, be liable to a  
22 penalty equal to the total amount of the tax evaded, or not  
23 collected, or not accounted for and paid over.

24 91. The failure to pay this kind of benefit, amounts to an underpayment  
25 under the broad definition of “wages” set forth in Labor Code §200.

26 92. As the California Supreme Court explained in *Murphy v. Kenneth*  
27 *Cole Productions, Inc.*, 40 Cal.4<sup>th</sup> 1094, 1103 (2007): “[t]he Labor Code defines  
28 “wages” as “all amounts for labor performed by employees of every description,

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1 whether the amount is fixed or ascertained by the standard of time, task, piece,  
2 commission basis, or other methods of calculation.” (§200(a))

3 93. Courts have recognized that “wages” also include those benefits to  
4 which an employee is entitled as a part of his or her compensation, including  
5 money, room, board, clothing, vacation pay, and sick pay.”

6 94. By not paying Plaintiff his full wages and forcing him to cover the  
7 employer payroll tax obligation, Defendants have repeatedly failed to pay Plaintiff  
8 all wages that were due when they issued him his salary checks.

9 95. Further, those back wages were not paid immediately upon  
10 separation, or within 72 hours of separation.

11 96. At all relevant times herein and as alleged herein, Defendants failed  
12 to pay to Plaintiff all wages by the times required by law in the time periods set  
13 forth by California Labor Code § 204 regarding the time of wage payments were  
14 not adhered to and all regular wages were not paid.

15 97. At all times herein set forth, California Labor Code §§ 201 and 202  
16 provide that if an employer discharges an employee, the wages earned and unpaid  
17 at the time of discharge are due and payable immediately, and that if an employee  
18 voluntarily leaves his or her employment, his or her wages shall become due and  
19 payable not later than 72 hours thereafter, unless the employee has given 72 hours  
20 previous notice of his or her intention to quit, in which case the employee is  
21 entitled to his or her wages at the time of quitting.

22 98. During the relevant time period, Defendants willfully failed to pay  
23 Plaintiff earned and unpaid wages, either at the time of discharge, or within 72  
24 hours of his leaving YUM’s employ.

25 99. Defendants’ failure to pay Plaintiff his wages earned and unpaid at  
26 the time of discharge is in violation of California Labor Code §§ 201 and 202.

27 100. California Labor Code § 203 provides that if an employer willfully  
28 fails to pay wages owed, in accordance with §§ 201 and 202, then the wages of the



1 employee shall continue as a penalty from the due date, and at the same rate until  
2 paid or until an action is commenced; but the wages shall not continue for more  
3 than thirty days.

4 101. Plaintiff is entitled to recover from Defendants his additionally  
5 accruing wages for each day he was not paid, at his regular daily rate of pay, up to  
6 thirty days maximum pursuant to California Labor Code § 203.

7 102. Plaintiff seeks to recover the unpaid balance of the full amount of the  
8 unpaid regular wages and interest thereon, reasonable attorneys’ fees and costs of  
9 the suit to the fullest extent permissible including those permitted pursuant to the  
10 California Labor Code §§ 203, 218.5, 218.6 and Code of Civil Procedure § 1021.5.

11 **SIXTH CLAIM FOR RELIEF**

12 **[Supplemental State Claim - Violation of Labor Code § 2802—**

13 **Unreimbursed Expenses]**

14 **(By the Plaintiff against All Defendants)**

15 103. Plaintiff incorporates all paragraphs above as though fully set forth  
16 herein.

17 104. Under Labor Code §2802, an employer must indemnify its employees  
18 “for all necessary expenditures or losses incurred by the employee in direct  
19 consequence of the discharge of his or her duties.”

20 105. While the YUM did cover most of Plaintiff’s business expenses,  
21 certain costs were passed on to Plaintiff.

22 106. Defendants required Plaintiff to use a personal cell phone for work-  
23 related purposes, but failed to provide any cell phone reimbursement, even though  
24 the phone was necessary for carrying out his job duties.

25 107. There was no reimbursement for data expenses that were also  
26 necessary for viewing emails and performing other work outside the office.

27 108. Additionally, there was necessary driving expenses for work-related  
28 purposes, but Defendants failed to provide reimbursement under IRS mileage rates

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1 or otherwise, passing the cost off on Plaintiff.

2 109. Any contractual provision that purports to allow this would be void  
3 as against public policy. See Labor Code §2804.

4 110. Plaintiff was damaged by having to pay for necessary business  
5 expenses out of his own personal funds.

6 111. Plaintiff was further damaged by having to pay for his own insurance  
7 premiums for health insurance coverage for himself and his spouse. Normally,  
8 such health insurance coverage would have been provided by YUM but for  
9 Plaintiff’s misclassification as an independent contractor.

10 112. Plaintiff also seeks attorney’s fees under Labor Code § 2802(c)  
11 because these fees were necessarily incurred in protecting the rights of Plaintiff to  
12 the underlying reimbursement claim.

13 **SEVENTH CLAIM FOR RELIEF**

14 **[Supplemental State Claim - Violation of California Business & Professions**  
15 **Code § 17200, et seq.]**

16 **(By the Plaintiff against All Defendants)**

17 113. Plaintiff incorporates all paragraphs above as though fully set forth  
18 herein.

19 114. Defendant YUM and Taco Bell are considered a “person” as defined  
20 under Business & Professions Code § 17021.

21 115. Defendants’ conduct, as alleged herein, has been, and continues to be,  
22 unfair, unlawful, and harmful to Plaintiff and to the general public.

23 116. Plaintiff seeks to enforce important rights affecting the public interest  
24 within the meaning of Code of Civil Procedure § 1021.5.

25 117. Defendants’ activities, as alleged herein, are violations of California  
26 law, and constitute unlawful business acts and practices in violation of California  
27 Business & Professions Code § 17200, et seq.

28 118. A violation of California Business & Professions Code § 17200, et

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1 seq. may be predicated on the violation of any state or federal law.

2 119. All of the acts described herein as violations of, among other things,  
3 the California Labor Code and IWC Wage Orders, are unlawful and in violation  
4 of public policy; and in addition are immoral, unethical, oppressive, fraudulent and  
5 unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business  
6 practices in violation of California Business and Professions Code § 17200, et seq.

7 **Failing to Timely Pay Wages Upon Termination**

8 120. Defendants’ failure to timely pay wages, including the failure to pay  
9 employer payroll taxes, upon termination in accordance with California Labor  
10 Code §§ 201 and 202, as alleged above, constitutes unlawful and/or unfair activity  
11 prohibited by Business and Professions Code § 17200, et seq.

12 **Failing to Provide Accurate Itemized Wage Statements**

13 121. Defendants’ failure to provide accurate itemized wage statements in  
14 accordance with California Labor Code § 226, as alleged above, constitutes  
15 unlawful and/or unfair activity prohibited by Business and Professions Code §  
16 17200, et seq.

17 **Failing to Reimburse for Business Expenses**

18 122. Defendants’ failure to reimburse for necessary business expenses  
19 violates California Labor Code § 2802, as alleged above, constitutes unlawful  
20 and/or unfair activity prohibited by Business and Professions Code § 17200, et  
21 seq.

22 123. By and through it’s unfair, unlawful and/or fraudulent business  
23 practices described herein, Defendants’ have obtained valuable property, money,  
24 and services from Plaintiff, and have deprived Plaintiff of valuable rights and  
25 benefits guaranteed by law, all to his detriment.

26 124. Plaintiff suffered monetary injury as a direct result of Defendants’  
27 wrongful conduct.

28 125. Plaintiff is entitled to, and does, seek such relief as may be necessary

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1 to disgorge the profits which the Defendants have acquired, or of which Plaintiff  
2 has been deprived, by means of the above-described unfair, unlawful and/or  
3 fraudulent business practices.

4 126. Plaintiff is further entitled to and does seek a declaration that the  
5 above-described business practices are unfair, unlawful and/or fraudulent, and  
6 injunctive relief restraining Defendants from engaging in any of the above-  
7 described unfair, unlawful and/or fraudulent business practices in the future.

8 127. Plaintiff has no plain, speedy, and/or adequate remedy at law to  
9 redress the injuries which he has suffered as a consequence Defendants’ unfair,  
10 unlawful and/or fraudulent business practices.

11 128. As a result of the unfair, unlawful and/or fraudulent business practices  
12 described above, Plaintiff has suffered and will continue to suffer irreparable harm  
13 unless Defendants are restrained from continuing to engage in said unfair,  
14 unlawful and/or fraudulent business practices.

15 129. Pursuant to California Business & Professions Code § 17200, *et seq.*,  
16 Plaintiff is entitled to restitution of the wages withheld and retained by Defendants  
17 during a period that commences four years prior to the filing of this complaint; a  
18 permanent injunction requiring Defendants to pay all outstanding wages due to  
19 Plaintiff, disgorgement of profits obtained through payroll tax and worker’s  
20 compensation fraud; an award of attorneys’ fees pursuant to California Code of  
21 Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for judgment as follows:

- 24 a. A declaration that Plaintiff is a common law employee for all purposes,  
25 including, but not limited to, ERISA;
- 26 b. A declaration that Plaintiff is entitled to pension service credits under the  
27 Salaried Plan and PEP for all periods between 1995 and December 31,  
28 2020;

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- 1 c. Order YUM to remedy its breach of fiduciary duty, including, but not
- 2 limited to, by correcting the PEP's and Salaried Plan's records to reflect
- 3 all years of service for Plaintiff;
- 4 d. Order YUM to pay Plaintiff pension benefits in an amount equal to the
- 5 amount he would have received had the PEP and Salaried Plan granted
- 6 him service credits for the relevant time, along with prejudgment interest
- 7 thereon;
- 8 e. A declaration that YUM breached its fiduciary duty by failing to grant
- 9 service credits to Plaintiff for all years of service under the PEP and
- 10 Salaried Plan;
- 11 f. A declaration that YUM has violated ERISA § 209(a), 29 U.S.C. §
- 12 1129(a);
- 13 g. Order appropriate equitable and injunctive relief to remedy YUM's
- 14 violation of ERISA § 209(a), including an order that YUM use its own
- 15 records to determine the pension benefits due or which may become due
- 16 to Plaintiff;
- 17 h. Compensatory damages based on Plaintiff's inability to defer his
- 18 compensation and receive YUM phantom stock options;
- 19 i. Recovery of the unpaid balance of the full amount of the unpaid regular
- 20 wages and interest thereon, reasonable attorneys' fees and costs of the
- 21 suit to the fullest extent permissible including those permitted pursuant
- 22 to the California Labor Code §§ 203, 218.5, 218.6 and Code of Civil
- 23 Procedure § 1021.5;
- 24 j. Compensatory damages for having to pay for necessary business
- 25 expenses out of Plaintiff's own personal funds including health insurance
- 26 premiums;
- 27 k. Attorney's fees under Labor Code § 2802(c);
- 28 l. Restitution of the wages withheld and retained by YUM;

- 1 m. A permanent injunction requiring YUM to pay all outstanding wages due
- 2 to Plaintiff, disgorgement of profits obtained through payroll tax and
- 3 worker’s compensation fraud;
- 4 n. An award of attorneys’ fees pursuant to California Code of Civil
- 5 Procedure § 1021.5 and other applicable laws;
- 6 o. Award reasonable attorneys’ fees and costs of suit incurred herein
- 7 pursuant to ERISA 502(g), 29 U.S.C. 1132(g);
- 8 p. Pre and post judgment interest, as afforded by law; and
- 9 q. Provide such other relief as the Court deems equitable and just.

10 DATED: July 9, 2021

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12 By: s/Marc S. Schechter

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13 MARC S. SCHECHTER

14 PAUL D. WOODARD

15 Attorneys for Plaintiff

16 Tim Alders

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