

## SUMMONS (CITACION JUDICIAL)

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

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

AVEANNA HEALTHCARE AS, LLC, a Delaware limited liability company; PREMIER HEALTHCARE SERVICES, LLC, a California Limited Liability Company; and DOES 1 through 50, Inclusive;

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

MICHELLE LEE, an individual, on behalf of herself, and on behalf of all persons similarly situated,

E-FILED  
9/27/2021 3:05 PM  
Clerk of Court  
Superior Court of CA,  
County of Santa Clara  
21CV387081  
Reviewed By: R. Walker  
Envelope: 7347505

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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*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.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), 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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is:  
(El nombre y dirección de la corte es):

Santa Clara Superior Court  
191 North First Street  
San Jose, CA 95113

**21CV387081**  
CASE NUMBER  
(Número del Caso)

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):

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291

JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE:  
(Fecha) 9/27/2021 3:05 PM

Clerk of Court

Clerk, by R. Walker, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

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

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4.  by personal delivery on (date):



**ZAKAY LAW GROUP, APLC**  
Shani O. Zakay (State Bar #277924)  
Jackland K. Hom (State Bar #327243)  
5440 Morehouse Drive, Suite 3600  
San Diego, CA 92121  
Telephone: (619)255-9047  
Facsimile: (858) 404-9203  
[shani@zakaylaw.com](mailto:shani@zakaylaw.com)  
[jackland@zakaylaw.com](mailto:jackland@zakaylaw.com)

**JCL LAW FIRM, APC**  
Jean-Claude Lapuyade (State Bar #248676)  
Eduardo Garcia (State Bar #290572)  
5440 Morehouse Drive, Suite 3600  
San Diego, CA 92121  
Telephone: (619) 599-8292  
Facsimile: (619) 599-8291  
[jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)  
[egarcia@jcl-lawfirm.com](mailto:egarcia@jcl-lawfirm.com)

Attorneys for Plaintiff MICHELLE LEE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF SANTA CLARA**

MICHELLE LEE, an individual, on behalf of  
the State of California and other Aggrieved  
Employees,

Plaintiffs,

vs.

AVEANNA HEALTHCARE AS, LLC, a  
Delaware Limited Liability Company;  
PREMIER HEALTHCARE SERVICES, LLC,  
a California Limited Liability Company; and  
DOES 1 through 50, Inclusive;

Defendants

Case No. **21CV387081**

**REPRESENTATIVE ACTION  
COMPLAINT FOR:**

1. VIOLATIONS OF THE PRIVATE  
ATTORNEY GENERAL ACT AT  
LABOR CODE SETIONS 2698 *ET SEQ.*

**DEMAND FOR JURY TRIAL**

1 Plaintiff MICHELLE LEE (“PLAINTIFF”) an individual, in his representative capacity on  
2 behalf of the himself, the State of California, and fellow current and former AGGRIEVED  
3 EMPLOYEES, defined *supra*, against AVEANNA HEALTHCARE AS, LLC and PREMIER  
4 HEALTHCARE SERVICES, LLC, (“DEFENDANTS”), alleges on information and belief, except for  
5 her own acts and knowledge which are based on personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys General  
8 Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former  
9 aggrieved employees of DEFENDANT for engaging in a pattern and practice of wage and hour  
10 violations under the California Labor Code.

11 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS  
12 decreased their employment-related costs by systematically violating California wage and hour laws.

13 3. DEFENDANTS’ systematic pattern of wage and hour and IWC Wage Order violations  
14 toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 15 a. Failure to provide compliant meal periods;
- 16 b. Failure to provide compliant rest periods;
- 17 c. Failure to pay all minimum, regular and overtime wages, including at the correct rate;
- 18 d. Failure to reimburse for business expenses;
- 19 e. Failure to maintain true and accurate records;
- 20 f. Failure to pay sick time;
- 21 g. Failure to provide accurate itemized wage statements; and
- 22 h. Failure to timely pay wages due during, and upon termination of employment.

23 4. PLAINTIFF brings this representative action against DEFENDANTS on behalf of herself  
24 and all other aggrieved employees of DEFENDANT in California seeking all civil penalties and unpaid  
25 wages permitted pursuant to California Labor Code § 2699, *et seq.*

26 5. PLAINTIFF reserves the right to name additional representatives throughout the State of  
27 California.

1 **THE PARTIES**

2 6. Defendant AVEANNA HEALTHCARE AS, LLC (“Defendant Aveanna”) is a Delaware  
3 limited liability company that at all relevant times mentioned herein conducted and continues to conduct  
4 substantial business in the state of California, county of Santa Clara.

5 7. Defendant PREMIER HEALTHCARE SERVICES, LLC (“Defendant Premier”) is a  
6 California limited liability company that at all relevant times mentioned herein conducted and continues  
7 to conduct substantial business in the state of California, county of Santa Clara.

8 8. Defendant Aveanna and Defendant Premier were the joint employers of PLAINTIFF as  
9 evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively,  
10 and are therefore jointly responsible as employers for the conduct alleged herein and collectively  
11 referred to herein as “DEFENDANTS” and/or “DEFENDANT.” DEFENDANTS provide homecare and  
12 healthcare services in the state of California, county of Santa Clara.

13 9. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on an  
14 hourly basis and entitled to minimum wages, overtime pay, and legally compliant meal and rest periods  
15 from October of 2019 to June of 2021.

16 10. PLAINTIFF brings this action in her representative capacity on behalf of the State of  
17 California and on behalf of all of Defendant Aveanna’s and/or Defendant Premier’s current and former  
18 employees employed in California who suffered one or more Labor Code violations enumerated in  
19 Labor Code §§ 2698 *et seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for  
20 DEFENDANT between July 21, 2020 and the present (“PAGA PERIOD”).

21 11. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code §  
22 2699(c) because he was employed by DEFENDANTS and suffered one or more of the alleged Labor  
23 Code violations committed by DEFENDANTS.

24 12. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times were,  
25 employees of DEFENDANT, within the meanings set forth in the California Labor Code and the  
26 applicable Industrial Welfare Commission Wage Order.

27 13. Each of the fictitiously named defendants participated in the acts alleged in this  
28 Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50,





1 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth  
2 the true names and capacities of these fictitiously named defendants when their true names are  
3 ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious  
4 defendants have participated in the acts alleged in this Complaint.

5 14. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively  
6 “DEFENDANTS”), were PLAINTIFF’s employers or persons acting on behalf of PLAINTIFF’s  
7 employer, within the meaning of California Labor Code § 558, who violated or caused to be violated,  
8 a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days  
9 of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties  
10 for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

11 15. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of  
12 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,  
13 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee  
14 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties  
15 for each underpaid employee.

16 **JOINT EMPLOYER**

17 16. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce  
18 any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

19 17. Section 558 of the California Labor Code provides that “any employer *or other person*  
20 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
21 provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall  
22 be subject to a civil penalty...” (*Lab. Code* § 558(a).);

23 18. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person* acting  
24 either individually or as an officer, agent, or employee of another person, who pays or causes to be paid  
25 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order  
26 of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

27 19. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that  
28 a corporate employer’s owners, officers and directors, are subject to civil penalties for the employer’s

1 failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does  
2 not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v.*  
3 *Pedrazzani*, (2018) 27 Cal.App.5<sup>th</sup> 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009  
4 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4<sup>th</sup> 1112, 1145-1146.

5 20. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and each  
6 of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees  
7 the appropriate wages as complained of herein and proximately caused the complaints, injuries, and  
8 damages alleged herein.

9 21. At all relevant times, each Defendant, whether named or fictitious, was the agent,  
10 employee or other person acting on behalf of each other Defendant, and, in participating in the acts  
11 alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts  
12 of the other.

13 22. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF's  
14 wages, working hours, and/or working conditions.

15 23. Each Defendant, whether named or fictitious, acted in all respects pertinent to this action  
16 as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or policy, and the  
17 acts of each Defendant are legally attributable to the other DEFENDANTS.

18 **JURISDICTION AND VENUE**

19 1. This Court has jurisdiction over this Action pursuant to California Code of Civil  
20 Procedure, Section 410.10. This Court has jurisdiction over PLAINTIFF's claims for civil penalties  
21 under the Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*

22 24. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections  
23 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,  
24 and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities  
25 in this County and/or conducts substantial business in this County, and (ii) committed the wrongful  
26 conduct herein alleged in this County against the AGGRIEVED EMPLOYEES.

27  
28 ///



1 **THE CONDUCT**

2 25. In violation of the applicable sections of the California Labor Code and the requirements  
3 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company  
4 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally  
5 compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other  
6 AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the other  
7 AGGRIEVED EMPLOYEES for all time worked, failed to pay PLAINTIFF and the other  
8 AGGRIEVED EMPLOYEES overtime at the regular rate, and failed to issue to PLAINTIFF and the  
9 AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things,  
10 all applicable hourly rates in effect during the pay periods and the corresponding amount of time  
11 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to  
12 purposefully avoid the accurate and full payment for all time worked as required by California law  
13 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who  
14 comply with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED  
15 EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

16 **A. Meal Period Violations**

17 26. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were  
18 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the  
19 time during which an employee is subject to the control of an employer, including all the time the  
20 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD,  
21 DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them  
22 for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's  
23 demanding work requirements, and DEFENDANTS' under staffing, DEFENDANTS required  
24 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal  
25 break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what  
26 should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where  
27 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other AGGRIEVED  
28 EMPLOYEES forfeited minimum wage and overtime wages by regularly working without their time



1 being accurately recorded and without compensation at the applicable minimum wage and overtime  
2 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED  
3 EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

4 27. From time-to-time during the PAGA PERIOD, as a result of their rigorous work  
5 schedules, and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other AGGRIEVED  
6 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and were  
7 not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES  
8 were required from time to time to perform work as ordered by DEFENDANTS for more than five (5)  
9 hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to time  
10 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period  
11 for some workdays in which these employees were required by DEFENDANTS to work ten (10) hours  
12 of work from time to time. The nature of the work performed by the PLAINTIFF and the AGGRIEVED  
13 EMPLOYEES does not qualify for limited and narrowly construed "on-duty" meal period exception.  
14 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members  
15 were, from time to time, required to remain on the premises, on duty and/or on call. PLAINTIFF and  
16 other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation  
17 and in accordance with DEFENDANTS' strict corporate policy and practice.

18 **B. Rest Period Violations**

19 28. From time-to-time during the PAGA PERIOD, PLAINTIFF and other CALIFORNIA  
20 CLASS members were also required from time to time to work in excess of four (4) hours without  
21 being provided ten (10) minute rest periods as a result of their rigorous work schedules, and  
22 DEFENDANTS' inadequate staffing. Further, for the same reasons these employees were denied their  
23 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours  
24 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of  
25 between six (6) and eight (8) hours from time to time, and a first, second, and third rest period of at  
26 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they  
27 were provided with rest breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time  
28 to time, required to remain on the premises, on duty and/or on call. As a result of their rigorous work





1 schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other AGGRIEVED  
2 EMPLOYEES were from time to time denied their proper rest periods by DEFENDANTS and  
3 DEFENDANTS' managers.

4 **C. Regular Rate Violation – Overtime, Meal and Rest Period Premiums, and Sick Pay**

5 29. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail  
6 to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their  
7 overtime hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFF and the  
8 other AGGRIEVED EMPLOYEES forfeited wages due to them for working overtime without  
9 compensation at the correct overtime, meal and rest period premium, and sick pay rates.  
10 DEFENDANTS' uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct  
11 overtime rate for all overtime worked, meal and rest period premiums, and sick pay in accordance with  
12 applicable law is evidenced by DEFENDANTS' business records.

13 30. State law provides that employees must be paid overtime at one-and-one-half times their  
14 "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an  
15 hourly rate plus bonuses that was tied to how much money the company makes per year in sales.

16 31. DEFENDANTS' non-discretionary bonus program provided the AGGRIEVED  
17 EMPLOYEES, including PLAINTIFF, with bonus compensation when the company met the various  
18 performance goals set by DEFENDANT. However, when calculating the regular rate of pay, in those  
19 pay periods where PLAINTIFF and the AGGRIEVED EMPLOYEES worked overtime and earned  
20 non-discretionary bonus compensation, DEFENDANT failed to accurately include the non-  
21 discretionary bonus compensation as part of the employees' "regular rate of pay."

22 32. In other instances, when calculating the regular rate of pay, in those pay periods where  
23 PLAINTIFF and the AGGRIEVED EMPLOYEES worked overtime and earned this non-discretionary  
24 bonus, DEFENDANT failed to (1) accurately include the non-discretionary bonus compensation into  
25 the regular rate of pay and/or (2) calculated all hours worked rather than just all non-overtime hours  
26 worked into the regular rate of pay in violation of *Alvarado v. Dart* (2018) 4 Cal.5th 542.

27 33. As a matter of law, the incentive and commission compensation received by PLAINTIFFS  
28 and other AGGRIEVED EMPLOYEES must be included and correctly calculated into the "regular rate



1 of pay” for purposes of overtime compensation, meal and rest period premiums, and sick pay.  
2 DEFENDANTS’ failure to do so has resulted in DEFENDANTS’ systematic underpayment of  
3 overtime compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other  
4 AGGRIEVED EMPLOYEES. Specifically, California Labor Code Section 246 mandates that paid sick  
5 time for non-employees shall be calculated in the same manner as the regular rate of pay for the  
6 workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually  
7 works overtime in that workweek. DEFENDANTS’ conduct, as articulated herein, by failing to include  
8 the incentive compensation as part of the “regular rate of pay” for purposes of sick pay compensation  
9 was in violation of Cal. Lab. Code § 246.

10 34. In violation of the applicable sections of the California Labor Code and the requirements  
11 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company  
12 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the  
13 other AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime worked and sick pay.  
14 This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment of  
15 the correct overtime and sick pay compensation as required by California law which allowed  
16 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied with  
17 the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES  
18 against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

19 **D. Unreimbursed Business Expenses**

20 35. DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally,  
21 knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the AGGRIEVED  
22 EMPLOYEES for required business expenses they incurred in direct consequence of discharging their  
23 duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are  
24 required to indemnify employees for all expenses incurred in the course and scope of their employment.  
25 Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all  
26 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of  
27 his or her duties, or of his or her obedience to the directions of the employer, even though unlawful,  
28 unless the employee, at the time of obeying the directions, believed them to be unlawful."



1           36. From time-to-time during the PAGA PERIOD, PLAINTIFF and the AGGRIEVED  
2 EMPLOYEES were required by DEFENDANTS to use their own personal cellular phones as a result  
3 of and in furtherance of their job duties as employees for DEFENDANTS. But for the use of their  
4 personal cell phones, PLAINTIFF and the AGGRIEVED EMPLOYEES could not complete their  
5 essential job duties. Notwithstanding, DEFENDANTS did not reimburse or indemnify PLAINTIFF or  
6 the AGGRIEVED EMPLOYEES for the cost associated with the use of their personal cellular phones  
7 for DEFENDANTS' benefit. As a result, in the course of their employment with DEFENDANTS,  
8 PLAINTIFF and the AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which  
9 included, but were not limited to, costs related to the use of their personal cellular phones, all on behalf  
10 of and for the benefit of DEFENDANTS.

11 **E. Wage Statement Violations**

12           37. California Labor Code Section 226 requires an employer to furnish its employees an  
13 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the  
14 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages  
15 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the  
16 employee and only the last four digits of the employee's social security number or an employee  
17 identification number other than a social security number, (8) the name and address of the legal entity  
18 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the  
19 corresponding number of hours worked at each hourly rate by the employee.

20           38. From time to time during the PAGA PERIOD, when PLAINTIFF and other  
21 AGGRIEVED EMPLOYEES missed meal and rest breaks, were paid inaccurate missed meal and rest  
22 period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide  
23 PLAINTIFF and the other AGGRIEVED EMPLOYEES with complete and accurate wage statements  
24 which failed to show, among other things, all applicable hourly rates in effect during the pay period  
25 and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty  
26 payments or missed meal and rest periods. Further, from time to time during the PAGA PERIOD,  
27 DEFENDANTS issued wage statements to PLAINTIFF and other AGGRIEVED EMPLOYEES that  
28



1 failed to show all applicable hourly rates for overtime and double time compensation, in violation of  
2 Cal. Lab. Code 226(a)(9).

3 39. In addition to the violations described above, DEFENDANTS, from time to time, failed  
4 to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with  
5 Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other members of the  
6 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. DEFENDANTS'  
7 violations are knowing and intentional, were not isolated or due to an unintentional payroll error due  
8 to clerical or inadvertent mistake.

9 **FIRST CAUSE OF ACTION**

10 **For Civil Penalties Pursuant to Private Attorneys General Act (“PAGA”)**

11 **[Cal. Lab. Code §§ 2698, et seq.]**

12 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

13 40. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this  
14 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

15 41. PAGA is a mechanism by which the State of California itself can enforce state labor laws  
16 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law  
17 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law  
18 enforcement action designed to protect the public and not to benefit private parties. The purpose of the  
19 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private  
20 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified  
21 that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general  
22 to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA  
23 claims cannot be subject to arbitration.

24 42. PLAINTIFF brings this Representative Action on behalf of the State of California with  
25 respect to herself and all other current and former AGGRIEVED EMPLOYEES employed by  
26 DEFENDANTS during the PAGA PERIOD.



1           43. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the  
2 AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the meaning of  
3 Labor Code Section 2699(c).

4           44. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like  
5 PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil action to  
6 recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

7           45. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code  
8 Section 2699.3. By certified letter, return receipt requested, dated July 21, 2021, PLAINTIFF gave  
9 written notice to the Labor and Workforce Development Agency (“LWDA”) and to DEENDANTS of  
10 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories  
11 to support the alleged violations. (See Exhibit 1).

12           46. As of September 24, 2021, more than sixty-five (65) days after serving the LWDA with  
13 notice of DEFENDANTS’ violations, the LWDA has not provided any notice by certified mail of its  
14 intent to investigate the DEFENDANTS’ alleged violations as mandated by Labor Code Section  
15 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may  
16 commence and is authorized to pursue this cause of action.

17           47. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to the  
18 California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled the statute  
19 of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of  
20 limitation and repose for civil causes of action that are 180 days or less, of (b) October 1, 2020 for  
21 statutes of limitation and repose for civil causes of action that exceed 180 days.

22           48. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED  
23 EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of Labor Code Section 201,  
24 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5,  
25 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, in the following amounts:

- 26           a. For violation of Labor Code Sections 201, 202, 203, and 204, one  
27 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period  
28 for the initial violation and two hundred dollars (\$200) for AGGIEVED



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

EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section 2699(f)(2)];

b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];

c. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and hundred dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE per violation in an initial citation and one thousand dollars (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 226.3];

f. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period

1 for each subsequent violation [penalty per Labor Code Section].

2 2. For all provisions of the Labor Code for which civil penalty is not specifically provided,  
3 Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each  
4 AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for  
5 each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the  
6 AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in  
7 connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

10 (a) For reasonable attorney's fees and costs of suit to the extent permitted by law, including  
11 pursuant to Labor Code § 2699, *et seq.*;

12 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the  
13 Private Attorneys General Act; and

14 (c) For such other relief as the Court deems just and proper.

15  
16  
17 Dated: September 27, 2021

Respectfully Submitted,  
JCL LAW FIRM, A.P.C.


18  
19 By:   
20 Jean-Claude Lapuyade  
21 Attorneys for PLAINTIFF  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

PLAINTIFF demands a jury trial on all issues triable to a jury.

Dated: September 27, 2021

Respectfully Submitted,  
JCL LAW FIRM, A.P.C.

By:   
Jean-Claude Lapuyade  
Attorneys for PLAINTIFF



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



# **EXHIBIT 1**



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #40001

July 21, 2021

**Via Online Filing to LWDA and Certified Mail to Defendants**

**Labor and Workforce Development Agency**

Online Filing

<p>Labor &amp; Workforce Development Agency          Attn. PAGA Administrator          1515 Clay Street, Ste. 801          Oakland, CA 94612          PAGA@dir.ca.gov  <i>Via Online Submission</i></p>	<p><b>AVEANNA HEALTHCARE AS, LLC</b>          c/o CSC – Lawyers Incorporating Service          2710 Gateway Oaks Drive, Suite 150N          Sacramento, CA 95833  <i>Via Certified Mail with Return Receipt          No. 7021 0850 0001 6369 9835</i></p>
	<p><b>PREMIER HEALTHCARE SERVICES, LLC</b>          c/o CSC – Lawyers Incorporating Service          2710 Gateway Oaks Drive, Suite 150N          Sacramento, CA 95833  <i>Via Certified Mail with Return Receipt          No. 7021 0950 0001 6369 9828</i></p>

**Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

Our offices represent Plaintiff MICHELLE LEE (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against AVEANNA HEALTHCARE AS, LLC (“Aveanna”) and PREMIER HEALTHCARE SERVICES, LLC (“Premier”) (collectively, “Defendants”). Plaintiff was employed by Defendants in California between October of 2019 to June of 2021 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

**Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant Aveanna and/or Defendant Premier during the relevant claim period.**

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,



Shani O. Zakay  
Attorney for Plaintiff

1 JEAN-CLAUDE LAPUYADE (SBN 248676)

2 [JLAPUYADE@JCL-LAWFIRM.COM](mailto:JLAPUYADE@JCL-LAWFIRM.COM)

3 **JCL LAW FIRM, APC**

4 3990 OLD TOWN AVENUE, SUITE C204

5 SAN DIEGO, CA 92110

6 TEL: (619) 599-8292

7 FAX: (619) 599-8291

8 SHANI O. ZAKAY (SBN 277924)

9 **ZAKAY LAW GROUP, APLC**

10 3990 OLD TOWN AVENUE, SUITE C204

11 SAN DIEGO, CA 92110

12 TEL: (619) 255-9047

13 FAX: (619) 404-9203

14 ATTORNEYS FOR PLAINTIFF

15 **SUPERIOR COURT OF CALIFORNIA**  
16 **COUNTY OF SANTA CLARA**

17 MICHELLE LEE, an individual, on behalf of  
18 herself, and on behalf of all persons similarly  
19 situated,

20 Plaintiffs,

21 vs.

22 AVEANNA HEALTHCARE AS, LLC, a  
23 Delaware Limited Liability Company;  
24 PREMIER HEALTHCARE SERVICES, LLC,  
25 a California Limited Liability Company; and  
26 DOES 1 through 50, Inclusive;

27 DEFENDANTS.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§ 226 and 226.2;
8. FAILURE TO PAY SICK PAY AT THE CORRECT RATE OF PAY IN VIOLATION OF CAL. LAB. CODE § 246, *et seq.*;
9. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203.

**DEMAND FOR JURY TRIAL**

1  
2 Plaintiff MICHELLE LEE (“PLAINTIFF”) an individual, on behalf of herself and all other  
3 similarly situated current and former employees alleges on information and belief, except for her own  
4 acts and knowledge which are based on personal knowledge, the following:

5 **THE PARTIES**

6 1. Defendant AVEANNA HEALTHCARE AS, LLC (“Defendant Aveanna”) is a Delaware  
7 limited liability company that at all relevant times mentioned herein conducted and continues to  
8 conduct substantial business in the state of California, county of Santa Clara.

9 2. Defendant PREMIER HEALTHCARE SERVICES, LLC (“Defendant Premier”) is a  
10 California limited liability company that at all relevant times mentioned herein conducted and continues  
11 to conduct substantial business in the state of California, county of Santa Clara.

12 3. Defendant Aveanna and Defendant Premier were the joint employers of PLAINTIFF as  
13 evidenced by the contracts signed and by the company the PLAINTIFF performed work for  
14 respectively, and are therefore jointly responsible as employers for the conduct alleged herein and  
15 collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.” DEFENDANTS provide  
16 homecare and healthcare services in the state of California, county of Santa Clara.

17 4. The true names and capacities, whether individual, corporate, subsidiary, partnership,  
18 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to  
19 PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc.  
20 Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and  
21 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and  
22 believes, and based upon that information and belief allege, that the Defendants named in this  
23 Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANT” and/or  
24 “DEFENDANTS”), are responsible in some manner for one or more of the events and happenings that  
25 proximately caused the injuries and damages hereinafter alleged.

26 5. The agents, servants and/or employees of the DEFENDANTS and each of them acting on  
27 behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent,  
28



1 servant and/or employee of the DEFENDANTS, and personally participated in the conduct alleged  
2 herein on behalf of the DEFENDANTS with respect to the conduct alleged herein. Consequently, the  
3 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are  
4 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a  
5 proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

6 6. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of  
7 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or caused  
8 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating  
9 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to  
10 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

11 7. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of  
12 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,  
13 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee  
14 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties  
15 for each underpaid employee.

16 8. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on an  
17 hourly basis and entitled to minimum wages, overtime pay, and legally compliant meal and rest periods  
18 from October of 2019 to June of 2021.

19 9. PLAINTIFF brings this Class Action on behalf of herself and a California class, defined  
20 as all individuals who are or previously were employed by Defendant Aveanna and/or Defendant  
21 Premier and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the  
22 period beginning four years from the date of the filing of this Complaint and ending on a date  
23 determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim  
24 of CALIFORNIA CLASS members is under five million dollars (\$5,000,000.00). PLAINTIFF reserves  
25 the right to amend the following class definitions before the Court determines whether class  
26 certification is appropriate, or thereafter upon leave of Court.

27 10. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the  
28 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses

1 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which  
2 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest  
3 periods or an additional hour of pay at the regular rate of compensation in lieu thereof in violation of  
4 California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission  
5 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in  
6 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to  
7 provide accurate itemized wage statements in violation of California Labor Code Sections 226 and  
8 226.2.

9 11. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair and  
10 deceptive business practices whereby DEFENDANTS retained and continues to retain wages due  
11 PLAINTIFF and the other members of the CALIFORNIA CLASS.

12 12. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction  
13 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other  
14 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past  
15 and current unlawful conduct, and all other appropriate legal and equitable relief.

16 **JURISDICTION AND VENUE**

17 13. This Court has jurisdiction over this Action pursuant to California Code of Civil  
18 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is  
19 brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of  
20 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

21 14. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections  
22 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, and DEFENDANTS  
23 (i) currently maintain and at all relevant times, maintained offices and facilities in this County and/or  
24 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged  
25 in this County against members of the CALIFORNIA CLASS.

26 **THE CONDUCT**

27 15. In violation of the applicable sections of the California Labor Code and the requirements  
28 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company



1 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally  
2 compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members  
3 of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other  
4 members of the CALIFORNIA CLASS for all time worked, failed to pay PLAINTIFF and the other  
5 members of the CALIFORNIA CLASS overtime at the regular rate, and failed to issue to PLAINTIFF  
6 and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing,  
7 among other things, all applicable hourly rates in effect during the pay periods and the corresponding  
8 amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are  
9 intended to purposefully avoid the accurate and full payment for all time worked as required by  
10 California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over  
11 competitors who comply with the law. To the extent equitable tolling operates to toll claims by the  
12 CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

13 **A. Meal Period Violations**

14 16. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were  
15 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning  
16 the time during which an employee is subject to the control of an employer, including all the time the  
17 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD,  
18 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS members to work without paying  
19 them for all the time they were under DEFENDANTS' control. Specifically, as a result of  
20 PLAINTIFF's demanding work requirements, and DEFENDANTS' under staffing, DEFENDANTS  
21 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-  
22 duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked  
23 out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where  
24 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA  
25 CLASS members forfeited minimum wage and overtime wages by regularly working without their time  
26 being accurately recorded and without compensation at the applicable minimum wage and overtime  
27 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA  
28 CLASS members for all time worked is evidenced by DEFENDANTS' business records.





1           17. From time-to-time during the CLASS PERIOD, as a result of their rigorous work  
2 schedules, and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA  
3 CLASS members were from time to time unable to take thirty (30) minute off duty meal breaks and  
4 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS  
5 members were required from time to time to perform work as ordered by DEFENDANTS for more  
6 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from  
7 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-  
8 duty meal period for some workdays in which these employees were required by DEFENDANTS to  
9 work ten (10) hours of work from time to time. The nature of the work performed by the PLAINTIFF  
10 and the members of the CALIFORNIA CLASS does not qualify for limited and narrowly construed  
11 "on-duty" meal period exception. When they were provided with meal periods, PLAINTIFF and other  
12 CALIFORNIA CLASS Members were, from time to time, required to remain on the premises, on duty  
13 and/or on call. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal  
14 breaks without additional compensation and in accordance with DEFENDANTS' strict corporate  
15 policy and practice.

16 **B. Rest Period Violations**

17           18. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA  
18 CLASS members were also required from time to time to work in excess of four (4) hours without  
19 being provided ten (10) minute rest periods as a result of their rigorous work schedules, and  
20 DEFENDANTS' inadequate staffing. Further, for the same reasons these employees were denied their  
21 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours  
22 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of  
23 between six (6) and eight (8) hours from time to time, and a first, second, and third rest period of at  
24 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they  
25 were provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were, from  
26 time to time, required to remain on the premises, on duty and/or on call. As a result of their rigorous  
27 work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA  
28

1 CLASS members were from time to time denied their proper rest periods by DEFENDANTS and  
2 DEFENDANTS' managers.

3 **C. Regular Rate Violation – Overtime, Meal and Rest Period Premiums, and Sick Pay**

4 19. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to  
5 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for  
6 their overtime hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFF  
7 and the other CALIFORNIA CLASS members forfeited wages due to them for working overtime  
8 without compensation at the correct overtime, meal and rest period premium, and sick pay rates.  
9 DEFENDANTS' uniform policy and practice to not pay the CALIFORNIA CLASS members the  
10 correct overtime rate for all overtime worked, meal and rest period premiums, and sick pay in  
11 accordance with applicable law is evidenced by DEFENDANTS' business records.

12 20. State law provides that employees must be paid overtime at one-and-one-half times their  
13 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at  
14 an hourly rate plus bonuses that was tied to how much money the company makes per year in sales.

15 21. DEFENDANTS' non-discretionary bonus program provided the CALIFORNIA CLASS,  
16 including PLAINTIFF, with bonus compensation when the company met the various performance  
17 goals set by DEFENDANT. However, when calculating the regular rate of pay, in those pay periods  
18 where PLAINTIFF and the CALIFORNIA CLASS worked overtime and earned non-discretionary  
19 bonus compensation, DEFENDANT failed to accurately include the non-discretionary bonus  
20 compensation as part of the employees' "regular rate of pay."

21 22. In other instances, when calculating the regular rate of pay, in those pay periods where  
22 PLAINTIFF and the CALIFORNIA CLASS worked overtime and earned this non-discretionary bonus,  
23 DEFENDANT failed to (1) accurately include the non-discretionary bonus compensation into the  
24 regular rate of pay and/or (2) calculated all hours worked rather than just all non-overtime hours worked  
25 into the regular rate of pay in violation of *Alvarado v. Dart* (2018) 4 Cal.5th 542.

26 23. As a matter of law, the incentive and commission compensation received by PLAINTIFFS  
27 and other CALIFORNIA CLASS members must be included and correctly calculated into the "regular  
28 rate of pay" for purposes of overtime compensation, meal and rest period premiums, and sick pay.



1 DEFENDANTS' failure to do so has resulted in DEFENDANTS' systematic underpayment of  
2 overtime compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other  
3 CALIFORNIA CLASS members. Specifically, California Labor Code Section 246 mandates that paid  
4 sick time for non-employees shall be calculated in the same manner as the regular rate of pay for the  
5 workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually  
6 works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include  
7 the incentive compensation as part of the "regular rate of pay" for purposes of sick pay compensation  
8 was in violation of Cal. Lab. Code § 246.

9 24. In violation of the applicable sections of the California Labor Code and the requirements  
10 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company  
11 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the  
12 other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime worked and sick  
13 pay. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment  
14 of the correct overtime and sick pay compensation as required by California law which allowed  
15 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied with  
16 the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS members  
17 against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

18 **D. Unreimbursed Business Expenses**

19 25. DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally,  
20 knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the members of the  
21 CALIFORNIA CLASS for required business expenses they incurred in direct consequence of  
22 discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802,  
23 employers are required to indemnify employees for all expenses incurred in the course and scope of  
24 their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her  
25 employee for all necessary expenditures or losses incurred by the employee in direct consequence of  
26 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even  
27 though unlawful, unless the employee, at the time of obeying the directions, believed them to be  
28 unlawful."



1           26. From time-to-time during the CLASS PERIOD, PLAINTIFF and the members of the  
2 CALIFORNIA CLASS were required by DEFENDANTS to use their own personal cellular phones as  
3 a result of and in furtherance of their job duties as employees for DEFENDANTS. But for the use of  
4 their personal cell phones, PLAINTIFF and the members of the CALIFORNIA CLASS could not  
5 complete their essential job duties. Notwithstanding, DEFENDANTS did not reimburse or indemnify  
6 PLAINTIFF or the members of the CALIFORNIA CLASS for the cost associated with the use of their  
7 personal cellular phones for DEFENDANTS' benefit. As a result, in the course of their employment  
8 with DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS incurred  
9 unreimbursed business expenses which included, but were not limited to, costs related to the use of  
10 their personal cellular phones, all on behalf of and for the benefit of DEFENDANTS.

11 **E. Wage Statement Violations**

12           27. California Labor Code Section 226 requires an employer to furnish its employees an  
13 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the  
14 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages  
15 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the  
16 employee and only the last four digits of the employee's social security number or an employee  
17 identification number other than a social security number, (8) the name and address of the legal entity  
18 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the  
19 corresponding number of hours worked at each hourly rate by the employee.

20           28. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
21 CALIFORNIA CLASS members missed meal and rest breaks, were paid inaccurate missed meal and  
22 rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide  
23 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage  
24 statements which failed to show, among other things, all applicable hourly rates in effect during the  
25 pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for  
26 penalty payments or missed meal and rest periods. Further, from time to time during the CLASS  
27 PERIOD, DEFENDANTS issued wage statements to PLAINTIFF and other CALIFORNIA CLASS  
28



1 members that failed to show all applicable hourly rates for overtime and double time compensation, in  
2 violation of Cal. Lab. Code 226(a)(9).

3 29. In addition to the violations described above, DEFENDANTS, from time to time, failed  
4 to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply  
5 with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other members of  
6 the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. DEFENDANTS’  
7 violations are knowing and intentional, were not isolated or due to an unintentional payroll error due  
8 to clerical or inadvertent mistake.

9 **F. CLASS ACTION ALLEGATIONS**

10 30. PLAINTIFF brings the First through Ninth Causes of Action as a class action pursuant to  
11 California Code of Civil Procedure § 382 on behalf the CALIFORNIA CLASS, defined *supra*, that  
12 worked for DEFENDANT in California at any time beginning four (4) years prior to the filing of this  
13 Complaint and ending on the date as determined by the Court (“CLASS PERIOD”).

14 31. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been  
15 deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid  
16 minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal  
17 and rest period policies, failure to separately compensate rest periods, failure to separately compensate  
18 for all non-productive time, failure to provide accurate itemized wage statements, failure to maintain  
19 required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

20 32. The members of the class are so numerous that joinder of all class members is impractical.

21 33. Common questions of law and fact regarding DEFENDANTS’ conduct, including but not  
22 limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate  
23 the regular rate of pay for overtime and sick pay compensation, failure to accurately calculate the regular  
24 rate of compensation for missed meal and rest period premiums, failing to provide legally compliant  
25 meal and rest periods, failure to provide accurate itemized wage statements accurate, and failure ensure  
26 they are paid at least minimum wage and overtime, exist as to all members of the class and predominate  
27 over any questions affecting solely any individual members of the class. Among the questions of law  
28 and fact common to the class are:



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

- a. Whether DEFENDANTS maintained legally compliant meal period policies and practices;
- b. Whether DEFENDANTS maintained legally compliant rest period policies and practices;
- c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members accurate premium payments for missed meal and rest periods;
- d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members accurate overtime wages and sick pay;
- e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members at least minimum wage for all hours worked;
- f. Whether DEFENDANTS issued legally compliant wage statements;
- g. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- h. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- i. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods; and,

34. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

35. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same

1 interests as the other members of the class.

2 36. PLAINTIFF will fairly and adequately represent and protect the interests of the  
3 CALIFORNIA CLASS members.

4 37. PLAINTIFF retained able class counsel with extensive experience in class action  
5 litigation.

6 38. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests  
7 of the other CALIFORNIA CLASS members.

8 39. There is a strong community of interest among PLAINTIFF and the members of the  
9 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient  
10 to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

11 40. The questions of law and fact common to the CALIFORNIA CLASS members  
12 predominate over any questions affecting only individual members, including legal and factual issues  
13 relating to liability and damages.

14 41. A class action is superior to other available methods for the fair and efficient adjudication  
15 of this controversy because joinder of all class members is impractical. Moreover, since the damages  
16 suffered by individual members of the class may be relatively small, the expense and burden of  
17 individual litigation makes it practically impossible for the members of the class individually to redress  
18 the wrongs done to them. Without class certification and determination of declaratory, injunctive,  
19 statutory and other legal questions within the class format, prosecution of separate actions by individual  
20 members of the CALIFORNIA CLASS will create the risk of:

21 a. Inconsistent or varying adjudications with respect to individual members of the  
22 CALIFORNIA CLASS which would establish incompatible standards of conduct for the  
23 parties opposing the CALIFORNIA CLASS; and/or,

24 b. Adjudication with respect to individual members of the CALIFORNIA CLASS  
25 which would as a practical matter be dispositive of the interests of the other members not  
26 party to the adjudication or substantially impair or impeded their ability to protect their  
27 interests.

28 42. Class treatment provides manageable judicial treatment calculated to bring an efficient

1 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of  
2 DEFENDANTS.

3 **FIRST CAUSE OF ACTION**

4 **For Unlawful Business Practices**

5 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

6 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

7 43. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
8 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

9 44. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §  
10 17021.

11 45. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair  
12 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes  
13 injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair  
15 competition may be enjoined in any court of competent jurisdiction. The  
16 court may make such orders or judgments, including the appointment of a  
17 receiver, as may be necessary to prevent the use or employment by any  
18 person of any practice which constitutes unfair competition, as defined in  
19 this chapter, or as may be necessary to restore to any person in interest any  
20 money or property, real or personal, which may have been acquired by  
21 means of such unfair competition.

22 Cal. Bus. & Prof. Code § 17203.

23 46. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA  
24 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in  
25 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the  
26 “UCL”), by engaging and continuing to engage in business practices which violates California law,  
27 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations  
28 and the California Labor Code including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1194,



1 1197, 1197.1, 1198, & 2802, for which this Court should issue declaratory and other equitable relief  
2 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct  
3 held to constitute unfair competition, including restitution of wages wrongfully withheld.

4 47. By the conduct alleged herein, DEFENDANTS' practices were unlawful and unfair in that  
5 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or  
6 substantially injurious to employees, and were without valid justification or utility for which this Court  
7 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &  
8 Professions Code, including restitution of wages wrongfully withheld.

9 48. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent  
10 in that DEFENDANTS' uniform policy and practice failed to, *inter alia*, provide the legally mandated  
11 meal and rest periods, the required accurate amount of compensation for missed meal and rest periods,  
12 overtime and minimum wages owed, provide accurate itemized wage statements, due to a systematic  
13 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial  
14 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this  
15 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including  
16 restitution of wages wrongfully withheld.

17 49. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and  
18 deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the other members of  
19 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

20 50. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and  
21 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*,  
22 provide the legally mandated meal and rest periods, the required accurate amount of compensation for  
23 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage  
24 statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.  
25 Labor Code.

26 51. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each  
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal period  
28 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in

1 which a second off-duty meal period was not timely provided for each ten (10) hours of work.

2 52. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA  
3 CLASS member, one (1) hour of pay for each workday in which an off duty paid rest period was not  
4 timely provided as required by law.

5 53. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the  
6 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately  
7 calculated overtime and missed meal and rest periods premiums.

8 54. By and through the unlawful and unfair business practices described herein,  
9 DEFENDANTS has obtained valuable property, money and services from PLAINTIFF and the other  
10 members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has  
11 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of  
12 these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly  
13 compete against competitors who comply with the law.

14 55. All the acts described herein as violations of, among other things, the Industrial Welfare  
15 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were  
16 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were  
17 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.  
18 Bus. & Prof. Code §§ 17200, *et seq.*

19 56. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,  
20 seek such relief as may be necessary to restore to them the money and property which DEFENDANTS  
21 has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been  
22 deprived, by means of the above described unlawful and unfair business practices, including earned but  
23 unpaid wages for all overtime worked.

24 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,  
25 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and  
26 that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and  
27 unfair business practices in the future.

28 58. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy

1 and/or adequate remedy at law that will end the unlawful and unfair business practices of  
2 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result  
3 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of  
4 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic  
5 harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair  
6 business practices.

7 **SECOND CAUSE OF ACTION**

8 **For Failure to Pay Overtime Compensation**

9 **[Cal. Lab. Code §§ 510, *et seq.*]**

10 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

11 59. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
12 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

13 60. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period  
14 beginning four years prior to the filing of the Complaint and the present (“LABOR CLASS PERIOD”)  
15 bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and  
16 the Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these employees  
17 for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or  
18 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

19 61. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy,  
20 an employer must timely pay its employees for all hours worked.

21 62. Cal. Lab. Code § 510 further provides that employees in California shall not be employed  
22 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they  
23 receive additional compensation beyond their regular wages in amounts specified by law.

24 63. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages, including  
25 overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198  
26 further states that the employment of an employee for longer hours than those fixed by the Industrial  
27 Welfare Commission is unlawful.

28 64. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members

1 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they  
2 worked or were not accurately compensated for all overtime hours worked.

3 65. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,  
4 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a  
5 uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other  
6 CALIFORNIA CLASS members and denied accurate compensation to PLAINTIFF and the other  
7 members of the CALIFORNIA CLASS for overtime worked, including, the overtime work performed  
8 in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours  
9 in any workweek.

10 66. In committing these violations of the California Labor Code, DEFENDANTS inaccurately  
11 calculated the amount of overtime worked and the applicable overtime rates and consequently underpaid  
12 the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS.  
13 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits  
14 in violation of the California Labor Code, the Industrial Welfare Commission requirements and other  
15 applicable laws and regulations.

16 67. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,  
17 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for  
18 all overtime worked.

19 68. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the  
20 overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other  
21 members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the  
22 CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude  
23 the causes of action contained herein this Complaint. Rather, the PLAINTIFF brings this Action on  
24 behalf of himself and the CALIFORNIA CLASS based on DEFENDANTS' violations of non-  
25 negotiable, non-waivable rights provided by the State of California.

26 69. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the  
27 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure  
28 to pay all earned wages.

1           70.     DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the  
2 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum  
3 hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF  
4 and the other members of the CALIFORNIA CLASS were required to work, and did in fact work,  
5 overtime as to which DEFENDANTS failed to accurately record and pay using the applicable overtime  
6 rate as evidenced by DEFENDANTS' business records and witnessed by employees.

7           71.     By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation  
8 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,  
9 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to  
10 suffer an economic injury in amounts which are presently unknown to them and which will be  
11 ascertained according to proof at trial.

12           72.     DEFENDANTS knew or should have known that PLAINTIFF and the other members of  
13 the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANTS  
14 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay  
15 employees for their labor as a matter of uniform company policy, practice and procedure, and  
16 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other  
17 members of the CALIFORNIA CLASS for overtime worked.

18           73.     In performing the acts and practices herein alleged in violation of California labor laws,  
19 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide  
20 them with the requisite overtime compensation, DEFENDANTS acted and continues to act intentionally,  
21 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS  
22 with a conscious of and utter disregard for their legal rights, or the consequences to them, and with the  
23 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury  
24 in order to increase company profits at the expense of these employees.

25           74.     PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request  
26 recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as  
27 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the  
28 California Labor Code and/or other applicable statutes. To the extent overtime compensation is

1 determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment,  
2 DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals  
3 are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought  
4 herein on behalf of these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein  
5 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS  
6 Members are entitled to seek and recover statutory costs.

7 **THIRD CAUSE OF ACTION**

8 **For Failure to Pay Minimum Wages**

9 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

10 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

11 75. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
12 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

13 76. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for  
14 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial  
15 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay  
16 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the  
17 LABOR CLASS PERIOD.

18 77. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy,  
19 an employer must timely pay its employees for all hours worked.

20 78. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
21 commission is the minimum wage to be paid to employees, and the payment of a less wage than the  
22 minimum so fixed is unlawful.

23 79. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including  
24 minimum wage compensation and interest thereon, together with the costs of suit.

25 80. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other  
26 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For  
27 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to  
28 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without

1 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to  
2 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members  
3 of the CALIFORNIA CLASS.

4 81. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,  
5 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a  
6 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members  
7 of the CALIFORNIA CLASS in regard to minimum wage pay.

8 82. In committing these violations of the California Labor Code, DEFENDANTS inaccurately  
9 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF  
10 and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid  
11 the payment of all earned wages, and other benefits in violation of the California Labor Code, the  
12 Industrial Welfare Commission requirements and other applicable laws and regulations.

13 83. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,  
14 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum  
15 wage compensation for their time worked for DEFENDANTS.

16 84. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the  
17 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure  
18 to pay all earned wages.

19 85. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation  
20 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,  
21 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to  
22 suffer an economic injury in amounts which are presently unknown to them and which will be  
23 ascertained according to proof at trial.

24 86. DEFENDANTS knew or should have known that PLAINTIFF and the other members of  
25 the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANTS  
26 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay  
27 employees for their labor as a matter of uniform company policy, practice and procedure, and  
28 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other

1 members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

2 87. In performing the acts and practices herein alleged in violation of California labor laws,  
3 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide  
4 them with the requisite compensation, DEFENDANTS acted and continues to act intentionally,  
5 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS  
6 with a conscious and utter disregard for their legal rights, or the consequences to them, and with the  
7 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury  
8 in order to increase company profits at the expense of these employees.

9 88. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request  
10 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of  
11 any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code  
12 and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed  
13 to the CALIFORNIA CLASS members who have terminated their employment, DEFENDANTS'  
14 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled  
15 to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of  
16 these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein was willful,  
17 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS members are  
18 entitled to seek and recover statutory costs.

19 **FOURTH CAUSE OF ACTION**

20 **For Failure to Provide Required Meal Periods**

21 **[Cal. Lab. Code §§ 226.7 & 512]**

22 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

23 89. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
24 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

25 90. During the LABOR CLASS PERIOD, from time to time, DEFENDANTS failed to  
26 provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA  
27 CLASS members as required by the applicable Wage Order and Labor Code. The nature of the work  
28 performed by PLAINTIFF and CALIFORNIA CLASS members did not prevent these employees from



1 being relieved of all of their duties for the legally required off-duty meal periods. As a result of their  
2 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were from time to  
3 time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally,  
4 DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS members with legally  
5 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business  
6 records from time to time. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA  
7 CLASS members with a second off-duty meal period in some workdays in which these employees were  
8 required by DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members  
9 of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in  
10 accordance with DEFENDANTS' strict corporate policy and practice.

11 91. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable IWC  
12 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not  
13 provided a meal period, in accordance with the applicable Wage Order, one additional hour of  
14 compensation at each employee's regular rate of compensation for each workday that a meal period was  
15 not provided.

16 92. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA  
17 CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned  
18 and due, interest, penalties, expenses and costs of suit.

19 **FIFTH CAUSE OF ACTION**

20 **For Failure to Provide Required Rest Periods**

21 **[Cal. Lab. Code §§ 226.7 & 512]**

22 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

23 93. PLAINTIFF, and the members of the CALIFORNIA CLASS, reallege and incorporate by  
24 this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

25 94. During the LABOR CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS  
26 Members were from time to time required to work in excess of four (4) hours without being provided  
27 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten  
28 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period

1 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,  
2 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more  
3 from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with  
4 one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other  
5 CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANTS  
6 and DEFENDANTS' managers.

7 95. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC  
8 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not  
9 provided a rest period, in accordance with the applicable Wage Order, one additional hour of  
10 compensation at each employee's regular rate of compensation for each workday that rest period was  
11 not provided.

12 96. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA  
13 CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned  
14 and due, interest, penalties, expenses and costs of suit.

15 **SIXTH CAUSE OF ACTION**

16 **For Failure to Reimburse Employees for Required Expenses**

17 **[Cal. Lab. Code § 2802]**

18 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

19 97. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
20 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

21 98. Cal. Lab. Code § 2802 provides, in relevant part, that:

22 An employer shall indemnify his or her employee for all necessary expenditures or  
23 losses incurred by the employee in direct consequence of the discharge of his or her  
24 duties, or of his or her obedience to the directions of the employer, even though  
25 unlawful, unless the employee, at the time of obeying the directions, believed them  
26 to be unlawful.

27 99. From time-to-time during the LABOR CLASS PERIOD, DEFENDANTS violated Cal.  
28 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the

1 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for  
2 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of the  
3 CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using their  
4 personal cellular phone all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF  
5 and the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their personal  
6 cell phones to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform  
7 policy, practice and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA  
8 CLASS for expenses resulting from using their personal cellular phones for DEFENDANTS within the  
9 course and scope of their employment for DEFENDANTS. These expenses were necessary to complete  
10 their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver  
11 of their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the  
12 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse PLAINTIFF  
13 and the members of the CALIFORNIA CLASS for these expenses as an employer is required to do under  
14 the laws and regulations of California.

15 100. PLAINTIFF therefore demands reimbursement on behalf of the members of the  
16 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and on behalf  
17 of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with interest at the statutory  
18 rate and costs under Cal. Lab. Code § 2802.

19 **SEVENTH CAUSE OF ACTION**

20 **For Failure to Provide Accurate Itemized Statements**

21 **[Cal. Lab. Code §§ 226 and 226.2]**

22 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

23 101. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
24 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

25 102. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
26 “accurate itemized” statement in writing showing:

- 27 1. Gross wages earned;
- 28 2. Total hours worked by the employee, except for any employee

1 whose compensation is solely based on a salary and who is exempt from  
2 payment of overtime under subdivision (a) of Section 515 or any applicable  
3 order of the Industrial Welfare Commission;

4 3. The number of piece-rate units earned and any applicable piece rate  
5 if the employee is paid on a piece-rate basis;

6 4. All deductions, provided that all deductions made on written orders  
7 of the employee may be aggregated and shown as one item;

8 5. Net wages earned;

9 6. The inclusive dates of the period for which the employee is paid;

10 7. The name of the employee and his or her social security number,  
11 except that by January 1, 2008, only the last four digits of his or her social  
12 security number or an employee identification number other than a social  
13 security number may be shown on the itemized statement;

14 8. The name and address of the legal entity that is the employer; and

15 9. All applicable hourly rates in effect during the pay period and the  
16 corresponding number of hours worked at each hourly rate by the employee.

17 103. During the LABOR CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF  
18 and the other members of the CALIFORNIA CLASS with complete and accurate wage statements  
19 which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages  
20 earned, (3) gross wages earned and (7) all applicable hourly rates in effect during the pay period and  
21 the corresponding number of hours worked at each hourly rate by the employee in violation of  
22 California Labor Code Section 226.

23 104. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §  
24 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA  
25 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for  
26 the overtime worked and the amount of employment taxes which were not properly paid to state and  
27 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other  
28 members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)

1 for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each  
2 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and  
3 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time  
4 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective  
5 member of the CALIFORNIA CLASS herein.

6 **EIGHTH CAUSE OF ACTION**

7 **FAILURE TO PAY SICK PAY AT THE CORRECT RATE OF PAY**

8 **(Cal. Lab. Code § 246, *et seq.*)**

9 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all DEFENDANT)**

10 105. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

12 106. Cal. Labor Code Sections 246(l)(1) mandates that “[p]aid sick time for nonexempt  
13 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which  
14 the employee uses paid sick time, whether or not the employee actually works overtime in that  
15 workweek.”

16 107. From time-to-time, during the PLAINTIFF and other members of the CALIFORNIA  
17 CLASS were compensated at an hourly rate plus bonuses. As a matter of law, the bonus compensation  
18 received by PLAINTIFF and other members of the CALIFORNIA CLASS must be included in the  
19 “regular rate of pay.”

20 108. From time-to-time during the CLASS PERIOD, in those pay periods where PLAINTIFF  
21 and other members of the CALIFORNIA LABOR SUB-CLASS earned hourly compensation and either  
22 non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to properly  
23 calculate the regular rate of pay for purposes of compensating paid sick time by omitting non-  
24 discretionary incentive pay from the regular rate of pay.

25 109. DEFENDANT’s uniform policy and practice of omitting non-discretionary bonuses from  
26 the regular rate of pay for purposes of paying paid sick pay, resulted in the underpayment of sick pay  
27 wages to PLAINTIFF and other members of the CALIFORNIA CLASS. PLAINTIFF and other  
28 members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, including sick  
pay wages, according to proof, interest, statutory costs, as well as the assessment of any statutory

1 penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other  
2 applicable statutes. To the extent sick pay is determined to be owed to other members of the  
3 CALIFORNIA LABOR SUB-CLASS who have terminated their employment, DEFENDANT’S  
4 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled  
5 to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of  
6 other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT’S conduct as alleged  
7 herein was willful, intentional and not in good faith. Further, PLAINTIFF and other members of the  
8 CALIFORNIA CLASS are entitled to seek and recover statutory costs.

9 **NINTH CAUSE OF ACTION**

10 **FAILURE TO PAY WAGES WHEN DUE**

11 **(Cal Lab. Code §§ 201, 202, 203)**

12 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

13 110. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
14 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

15 111. Cal. Lab. Code § 200 provides that:

16 As used in this article: (a) "Wages" includes all amounts for labor  
17 performed by employees of every description, whether the amount  
18 is fixed or ascertained by the standard of time, task, piece,  
19 Commission basis, or other method of calculation. (b) "Labor"  
20 includes labor, work, or service whether rendered or performed  
21 under contract, subcontract, partnership, station plan, or other  
22 agreement if the labor to be paid for is performed personally by the  
23 person demanding payment.

24 112. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges an  
25 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

26 113. Cal. Lab. Code § 202 provides, in relevant part, that:

27 If an employee not having a written contract for a definite period  
28 quits his or her employment, his or her wages shall become due and

1 payable not later than 72 hours thereafter, unless the employee has  
2 given 72 hours previous notice of his or her intention to quit, in  
3 which case the employee is entitled to his or her wages at the time  
4 of quitting. Notwithstanding any other provision of law, an  
5 employee who quits without providing a 72-hour notice shall be  
6 entitled to receive payment by mail if he or she so requests and  
7 designates a mailing address. The date of the mailing shall constitute  
8 the date of payment for purposes of the requirement to provide  
9 payment within 72 hours of the notice of quitting.

10 114. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members'  
11 employment contract.

12 115. Cal. Lab. Code § 203 provides:

13 If an employer willfully fails to pay, without abatement or reduction,  
14 in accordance with Sections 201, 201.5, 202, and 205.5, any wages  
15 of an employee who is discharged or who quits, the wages of the  
16 employee shall continue as a penalty from the due date thereof at the  
17 same rate until paid or until an action therefor is commenced; but  
18 the wages shall not continue for more than 30 days.

19 116. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated,  
20 and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest  
21 breaks, as required by law.

22 117. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members  
23 of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand up to thirty days of pay as  
24 penalty for not paying all wages due at time of termination for all employees who terminated  
25 employment during the LABOR CLASS PERIOD, and demands an accounting and payment of all  
26 wages due, plus interest and statutory costs as allowed by law.

27 ///

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANT, jointly and  
3 severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

5 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as  
6 a class action pursuant to Cal. Code of Civ. Proc. § 382;

7 B) An order temporarily, preliminarily and permanently enjoining and restraining  
8 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

9 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld  
10 from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS;

11 D) Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund for  
12 restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFF and to the other  
13 members of the CALIFORNIA CLASS; and,

14 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth  
15 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ.  
16 Proc. § 382;

17 1. Compensatory damages, according to proof at trial, including compensatory  
18 damages for overtime compensation due PLAINTIFF and the other members of the  
19 CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus  
20 interest thereon at the statutory rate;

21 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
22 which a violation occurs and one hundred dollars (\$100) per each member of the  
23 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an  
24 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation  
25 of Cal. Lab. Code § 226;

26 3. Meal and rest period compensation pursuant to California Labor Code Sections  
27 226.7, 512 and the applicable IWC Wage Order; and  
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


4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

2. On all claims:

- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

Dated: September 27, 2021

Respectfully Submitted,  
JCL LAW FIRM, A.P.C.


By:   
Jean-Claude Lapuyade  
Attorneys for PLAINTIFF

**DEMAND FOR JURY TRIAL**

PLAINTIFF demands a jury trial on all issues triable to a jury.

Dated: September 27, 2021

Respectfully Submitted,  
JCL LAW FIRM, A.P.C.

By:   
Jean-Claude Lapuyade  
Attorneys for PLAINTIFF

**EXHIBIT**