

**SUMMONS
(CITACION JUDICIAL)**

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
07/13/2023 at 10:43:07 AM
Clerk of the Superior Court
By Nora Lopez, Deputy Clerk

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

CITY ELECTRIC SUPPLY COMPANY, a Florida corporation; and DOES 1-50, Inclusive,

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

RICHARD WINN, an individual, on behalf of himself, and on behalf of all persons similarly situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Diego Superior Court
Hall of Justice Courthouse - 330 West Broadway, San Diego, CA 92101

CASE NUMBER:
(Número del Caso): 37-2023-00029456-CU-OE-CTL

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. T: (619)599-8292 JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 07/14/2023 Clerk, by N. Lopez, Deputy
(Fecha) (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: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- 4. by personal delivery on (date):

JCL LAW FIRM, APC

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Clerk of the Superior Court
By Nora Lopez, Deputy Clerk

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

RICHARD WINN, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

CITY ELECTRIC SUPPLY COMPANY, a
Florida corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: 37-2023-00029456-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 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 PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

Plaintiff RICHARD WINN (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees, allege on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

1. Defendant CITY ELECTRIC SUPPLY COMPANY is a Florida corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANTS operates an electrical wholesale business in the state of California, including in San Diego County where PLAINTIFF worked.

3. PLAINTIFF was employed by DEFENDANT in California from 2007 to January of 2023 as a non-exempt employee, paid on an hourly basis and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all persons who are or previously were employed by DEFENDANT and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CLASS PERIOD caused by DEFENDANT’s uniform policy and practice which failed to

1 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
2 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained
3 and continues to retain wages due to PLAINTIFF and the other members of the CALIFORNIA
4 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
5 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
6 other members of the CALIFORNIA CLASS who have been economically injured by
7 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
8 relief.

9 6. The true names and capacities, whether individual, corporate, subsidiary,
10 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
11 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious
12 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
13 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
14 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
15 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
16 inclusive, are responsible in some manner for one or more of the events and happenings that
17 proximately caused the injuries and damages hereinafter alleged.

18 7. The agents, servants and/or employees of the Defendants and each of them acting
19 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
20 agent, servant and/or employee of the Defendants, and personally participated in the conduct
21 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
22 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
23 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
24 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
25 Defendants' agents, servants and/or employees.

26 **JURISDICTION AND VENUE**

27 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
28 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This

1 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
2 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

3 9. Venue is proper in this Court pursuant to California Code of Civil Procedure,
4 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
5 the CALIFORNIA CLASS across California, including in this County, and committed the
6 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

7 **THE CONDUCT**

8 10. In violation of the applicable sections of the California Labor Code and the
9 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a
10 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
11 failed to provide legally compliant meal and rest periods, failed to accurately compensate
12 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
13 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
14 time worked, failed compensate PLAINTIFF and other members of the CALIFORNIA CLASS
15 for off-the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA
16 CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other
17 members of the CALIFORNIA CLASS meal rest premiums at the regular rate, failed to reimburse
18 PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue
19 to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage
20 statements showing, among other things, all applicable hourly rates in effect during the pay
21 periods and the corresponding amount of time worked at each hourly rate. DEFENDANT’s
22 uniform policies and practices are intended to purposefully avoid the accurate and full payment
23 for all time worked as required by California law which allows DEFENDANT to illegally profit
24 and gain an unfair advantage over competitors who comply with the law. To the extent equitable
25 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CLASS
26 PERIOD should be adjusted accordingly.

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1 **A. Meal Period Violations**

2 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
3 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
4 meaning the time during which an employee is subject to the control of an employer, including
5 all the time the employee is suffered or permitted to work. From time to time during the CLASS
6 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
7 without paying them for all the time they were under DEFENDANT’s control. Specifically,
8 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
9 PLAINTIFF’S off-duty meal break. Indeed, there were many days where PLAINTIFF did not
10 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
11 Members forfeited minimum wage and overtime compensation by regularly working without their
12 time being accurately recorded and without compensation at the applicable minimum wage and
13 overtime rates. DEFENDANT’s uniform policy and practice not to pay PLAINTIFF and other
14 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT’s business
15 records.

16 12. From time to time during the CLASS PERIOD, as a result of their rigorous work
17 schedules and DEFENDANT’s inadequate staffing practices, PLAINTIFF and other
18 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
19 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
20 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
21 more than five (5) hours during some shifts without receiving a meal break. Further,
22 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second
23 off-duty meal period for some workdays in which these employees are required by DEFENDANT
24 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other
25 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed “on-
26 duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other
27 CALIFORNIA CLASS Members were, from time to time, required to remain on premises, on
28 duty and on call. Further, DEFENDANTS from time to time required PLAINTIFF and other

1 CALIFORNIA CLASS Members to maintain cordless communication devices in order to receive
2 and respond to work-related communications during what was supposed to be their off-duty meal
3 breaks. DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members
4 with legally required meal breaks is evidenced by DEFENDANT's business records. PLAINTIFF
5 and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional
6 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

7 **B. Rest Period Violations**

8 13. From time to time during the CLASS PERIOD, PLAINTIFF and other
9 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
10 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
11 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied
12 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
13 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
14 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
15 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
16 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
17 CLASS Members were, from time to time, required to remain on premises, on duty and/or on call.
18 Further, DEFENDANTS from time to time required PLAINTIFF and other CALIFORNIA
19 CLASS Members to maintain cordless communication devices in order to receive and respond to
20 work-related communications during what was supposed to be their off-duty rest breaks.
21 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
22 wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's inadequate
23 staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied
24 their proper rest periods by DEFENDANT and DEFENDANT's managers.

25 **C. Wage Statement Violations**

26 14. California Labor Code Section 226 required an employer to furnish its employees
27 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
28 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,

1 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
2 name of the employee and only the last four digits of the employee's social security number or an
3 employee identification number other than a social security number, (8) the name and address of
4 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate by the employee.

6 15. From time to time during the CLASS PERIOD, when PLAINTIFF and other
7 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
8 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also
9 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
10 accurate wage statements which failed to show, among other things, all deductions, the total hours
11 worked and all applicable hourly rates in effect during the pay period, and the corresponding
12 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
13 meal and rest periods.

14 16. Further, DEFENDANT from time to time issued wage statements to PLAINTIFF
15 and the CALIFORNIA CLASS Members that violated Cal. Lab. Code § 226(a)(2) by including
16 items such as Sick, Holiday, PTO and Vacation pay into the calculation for total hours worked
17 despite the foregoing items not being considered "hours worked" for purposes of Cal. Lab. Code
18 § 226(a)(2).

19 17. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
20 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
21 Cal. Lab. Code § 226.

22 18. As a result, DEFENDANT issued PLAINTIFF and other members of the
23 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
24 DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional
25 payroll error due to clerical or inadvertent mistake.

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1 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

2 19. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
3 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
4 for all hours worked.

5 20. During the CLASS PERIOD, from time-to-time DEFENDANT required
6 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
7 work, including but not limited to, performing keyholder duties such as disarming/arming the
8 work facility and setting up/shutting down the facility, and submitting to Covid-19 health
9 screenings. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to
10 have to work while off-the-clock.

11 21. DEFENDANT directed and directly benefited from the undercompensated off-the-
12 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

13 22. DEFENDANT controlled the work schedules, duties, and protocols, applications,
14 assignments, and employment conditions of PLAINTIFF and the other members of the
15 CALIFORNIA CLASS.

16 23. DEFENDANT was able to track the amount of time PLAINTIFF and the other
17 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
18 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
19 wages earned and owed for all the work they performed.

20 24. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
21 exempt employees, subject to the requirements of the California Labor Code.

22 25. DEFENDANT's policies and practices deprived PLAINTIFF and the other
23 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
24 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
25 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
26 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime
27 pay.

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1 26. DEFENDANT knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

3 27. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
4 forfeited wages due to them for all hours worked at DEFENDANT’s direction, control, and
5 benefit for the time spent working while off-the-clock. DEFENDANT’s uniform policy and
6 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
7 hours worked in accordance with applicable law is evidenced by DEFENDANT’s business
8 records.

9 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
10 **and Redeemed Sick Pay**

11 28. From time to time during the CLASS PERIOD, DEFENDANT failed and
12 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
13 Members for their overtime and double time hours worked, meal and rest period premiums, and
14 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
15 forfeited wages due to them for working overtime without compensation at the correct overtime
16 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
17 DEFENDANT’s uniform policy and practice not to pay the CALIFORNIA CLASS Members at
18 the correct rate for all overtime and double time worked, meal and rest period premiums, and
19 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT’s business
20 records.

21 29. State law provides that employees must be paid overtime at one-and-one-half times
22 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
23 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
24 employee’s performance.

25 30. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
26 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
27 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
28 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly

1 basis with bonus compensation when the employees met the various performance goals set by
2 DEFENDANTS.

3 31. However, from-time-to-time, when calculating the regular rate of pay, in those pay
4 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
5 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
6 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
7 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked
8 rather than just all non-overtime hours worked. Management and supervisors described the
9 incentive/bonus program to potential and new employees as part of the compensation package.
10 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
11 CLASS members must be included in the "regular rate of pay." The failure to do so has resulted
12 in a systematic underpayment of overtime and double time compensation, meal and rest period
13 premiums, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS members by
14 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
15 for non-employees shall be calculated in the same manner as the regular rate of pay for the
16 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
17 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by
18 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of
19 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
20 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

21 32. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
23 matter of company policy, practice, and procedure, intentionally and knowingly failed to
24 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
25 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
26 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
27 of the correct overtime and double time compensation, meal and rest period premiums, and sick
28 pay as required by California law which allowed DEFENDANT to illegally profit and gain an

1 unfair advantage over competitors who complied with the law. To the extent equitable tolling
2 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the
3 CLASS PERIOD should be adjusted accordingly.

4 **F. Unreimbursed Business Expenses**

5 33. DEFENDANT as a matter of corporate policy, practice, and procedure,
6 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
7 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
8 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
9 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
10 are required to indemnify employees for all expenses incurred in the course and scope of their
11 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
12 employee for all necessary expenditures or losses incurred by the employee in direct consequence
13 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
14 even though unlawful, unless the employee, at the time of obeying the directions, believed them
15 to be unlawful."

16 34. In the course of their employment, DEFENDANT required PLAINTIFF and other
17 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell
18 phones as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
19 CALIFORNIA CLASS Members were required to use their own cell phones in order to perform
20 work related tasks. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and
21 other CALIFORNIA CLASS Members for the personal expenses incurred for the use of their
22 personal cell phones. As a result, in the course of their employment with DEFENDANT,
23 PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed business
24 expenses that included, but were not limited to, costs related to the use of their personal cell
25 phones, all on behalf of and for the benefit of DEFENDANT.

26 **G. Unlawful Rounding Practices**

27 35. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
28 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other

1 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
2 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and
3 practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being
4 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
5 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
6 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
7 these employees for all their time worked, including the applicable overtime compensation for
8 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
9 time to time, forfeited compensation for their time worked by working without their time being
10 accurately recorded and without compensation at the applicable overtime rates.

11 36. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
12 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'
13 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful
14 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
15 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
16 receiving an off-duty meal break.

17 **H. Timekeeping Manipulation**

18 37. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
19 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
20 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
21 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
22 and rest breaks. Specifically, due to DEFENDANT's error-prone timekeeping system,
23 approximately five to eight minutes of PLAINTIFF and CALIFORNIA CLASS Member's time
24 worked were taken each day. As a result, DEFENDANT was able to and did in fact, unlawfully,
25 and unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF
26 and other members of the CALIFORNIA CLASS in order to avoid paying these employees for
27 all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
28 missed rest break.

1 38. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
2 time-to-time, forfeited time worked by working without their time being accurately recorded and
3 without compensation at the applicable pay rates.

4 39. The mutability of the timekeeping system also allowed DEFENDANTS to alter
5 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
6 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
7 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
8 were not at all times provided an off-duty meal break. This practice is a direct result of
9 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)
10 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

11 40. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
12 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
13 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and
14 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
15 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
16 records.

17 **I. Violations for Untimely Payment of Wages**

18 41. Pursuant to California Labor Code section 204, PLAINTIFF and the
19 CALIFORNIA CLASS members were entitled to timely payment of wages during their
20 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
21 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
22 meal period premium wages, and rest period premium wages within permissible time period.

23 42. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the
24 wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant
25 to Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall
26 become due and payable not later than 72 hours thereafter, unless the employee has given 72
27 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
28 or her wages at the time of quitting." PLAINTIFF and the CALIFORNIA CLASS Members

1 were, from time to time, not timely provided the wages earned and unpaid at the time of their
2 discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

3 43. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
4 paying all wages due at time of termination for all CALIFORNIA CLASS Members whose
5 employment ended during the CLASS PERIOD.

6 **J. Unlawful Deductions**

7 44. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
8 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
9 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
10 DEFENDANTS violated Labor Code § 221.

11 45. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
12 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
13 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
14 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
15 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
16 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
17 with a rest break, they required PLAINTIFF to remain on premises, on-duty and on-call for the
18 rest break. DEFENDANT policy caused PLAINTIFF to remain on premises, on-call and on-duty
19 during what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal
20 and rest breaks without additional compensation and in accordance with DEFENDANT'S strict
21 corporate policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs
22 that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse
23 PLAINTIFF for required business expenses related to the use of his personal cell phone in
24 violation of Cal. Lab. Code § 2802. To date, DEFENDANT has not fully paid PLAINTIFF the
25 minimum, overtime and double time compensation still owed to him or any penalty wages owed
26 to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does
27 not exceed the sum or value of \$75,000.

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CLASS ACTION ALLEGATIONS

1
2 46. PLAINTIFF bring this Class Action on behalf of himself, and a California class
3 defined as all persons who are or previously were employed DEFENDANT in California and
4 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
5 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
6 by the Court (the “CLASS PERIOD”).

7 47. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
8 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
9 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
10 illegal meal and rest period policies, failed compensate for off-the-clock work, failure to provide
11 accurate itemized wage statements, failed to reimburse for business expenses, failure to maintain
12 required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

13 48. The members of the class are so numerous that joinder of all class members is
14 impractical.

15 49. Common questions of law and fact regarding DEFENDANT’s conduct, including
16 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately
17 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
18 regular rate of compensation for missed meal and rest period premiums, failing to provide legally
19 compliant meal and rest periods, failure to provide accurate itemized wage statements accurate,
20 failed to reimburse for business expenses, and failure to ensure they are paid at least minimum
21 wage and overtime, exist as to all members of the class and predominate over any questions
22 affecting solely any individual members of the class. Among the questions of law and fact
23 common to the class are:

- 24 a. Whether DEFENDANT maintained legally compliant meal period policies and
- 25 practices;
- 26 b. Whether DEFENDANT maintained legally compliant rest period policies and
- 27 practices;

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- 1 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
- 2 Members accurate premium payments for missed meal and rest periods;
- 3 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
- 4 Members accurate overtime wages;
- 5 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
- 6 Members at least minimum wage for all hours worked;
- 7 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
- 8 CLASS Members for required business expenses;
- 9 g. Whether DEFENDANT issued legally compliant wage statements;
- 10 h. Whether DEFENDANT committed an act of unfair competition by systematically
- 11 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
- 12 CLASS for all time worked;
- 13 i. Whether DEFENDANT committed an act of unfair competition by systematically
- 14 failing to record all meal and rest breaks missed by PLAINTIFF and other
- 15 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
- 16 of this work, required employees to perform this work and permits or suffers to
- 17 permit this work;
- 18 j. Whether DEFENDANT committed an act of unfair competition in violation of the
- 19 UCL, by failing to provide the PLAINTIFF and the other members of the
- 20 CALIFORNIA CLASS with the legally required meal and rest periods.

21 50. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
22 a result of DEFENDANT’s conduct and actions alleged herein.

23 51. PLAINTIFF’S claims are typical of the claims of the CALIFORNIA CLASS, and
24 PLAINTIFF have the same interests as the other members of the class.

25 52. PLAINTIFF will fairly and adequately represent and protect the interests of the
26 CALIFORNIA CLASS Members.

27 53. PLAINTIFF retained able class counsel with extensive experience in class action
28 litigation.

1 54. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
2 interest of the other CALIFORNIA CLASS Members.

3 55. There is a strong community of interest among PLAINTIFF and the members of
4 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
5 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
6 sustained.

7 56. The questions of law and fact common to the CALIFORNIA CLASS Members
8 predominate over any questions affecting only individual members, including legal and factual
9 issues relating to liability and damages.

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

- 18 a. Inconsistent or varying adjudications with respect to individual members of the
19 CALIFORNIA CLASS which would establish incompatible standards of conduct
20 for the parties opposing the CALIFORNIA CLASS; and/or,
21 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
22 which would as a practical matter be dispositive of the interests of the other
23 members not party to the adjudication or substantially impair or impeded their
24 ability to protect their interests.

25 58. Class treatment provides manageable judicial treatment calculated to bring an
26 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
27 the conduct of DEFENDANT.

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

3 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

8 60. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

14 Any person who engages, has engaged, or proposes to engage in unfair competition may
15 be enjoined in any court of competent jurisdiction. The court may make such orders or
16 judgments, including the appointment of a receiver, as may be necessary to prevent the
17 use or employment by any person of any practice which constitutes unfair competition, as
18 defined in this chapter, or as may be necessary to restore to any person in interest any
19 money or property, real or personal, which may have been acquired by means of such
20 unfair competition. (Cal. Bus. & Prof. Code § 17203).

21 62. By the conduct alleged herein, DEFENDANT has engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
25 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
26 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
27 to constitute unfair competition, including restitution of wages wrongfully withheld.

28 63. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair
in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous
or substantially injurious to employees, and were without valid justification or utility for which

1 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
2 Business & Professions Code, including restitution of wages wrongfully withheld.

3 64. By the conduct alleged herein, DEFENDANT's practices were deceptive and
4 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
5 mandated meal and rest periods and the required amount of compensation for missed meal and
6 rest periods, and failed to pay minimum and overtime wages owed, due to a systematic business
7 practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
8 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
9 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
10 including restitution of wages wrongfully withheld.

11 65. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
12 unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
13 other members of the CALIFORNIA CLASS to be underpaid during their employment with
14 DEFENDANT.

15 66. By the conduct alleged herein, DEFENDANT's practices were also unfair and
16 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
17 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
18 required by Cal. Lab. Code §§ 226.7 and 512.

19 67. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
20 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
21 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
22 each workday in which a second off-duty meal period was not timely provided for each ten (10)
23 hours of work.

24 68. PLAINTIFF further demands on behalf of himself and on behalf of each
25 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
26 not timely provided as required by law.

27 69. By and through the unlawful and unfair business practices described herein,
28 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the

1 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
2 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
3 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
4 to unfairly compete against competitors who comply with the law.

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

10 71. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
11 and do, seek such relief as may be necessary to restore to them the money and property which
12 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
13 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
14 business practices, including earned but unpaid wages for all time worked.

15 72. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
16 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
17 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
18 engaging in any unlawful and unfair business practices in the future.

19 73. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
20 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
21 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
22 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
23 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
24 and economic harm unless DEFENDANT is restrained from continuing to engage in these
25 unlawful and unfair business practices.

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1 **SECOND CAUSE OF ACTION**

2 **Failure To Pay Minimum Wages**

3 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

4 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

8 75. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
9 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
10 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
11 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

14 77. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
15 commission is the minimum wage to be paid to employees, and the payment of a less wage than
16 the minimum so fixed is unlawful.

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

19 79. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
20 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
21 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
22 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
23 CALIFORNIA CLASS.

24 80. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
25 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
26 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
27 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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1 81. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately calculated the correct time worked and consequently underpaid the actual time
3 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
4 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
5 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
6 laws and regulations.

7 82. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
9 minimum wage compensation for their time worked for DEFENDANT.

10 83. During the CLASS PERIOD, PLAINTIFF and the other members of the
11 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
12 failure to pay all earned wages.

13 84. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
14 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
15 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
16 suffered and will continue to suffer an economic injury in amounts which are presently unknown
17 to them, and which will be ascertained according to proof at trial.

18 85. DEFENDANT knew or should have known that PLAINTIFF and the other
19 members of the CALIFORNIA CLASS were under-compensated for their time worked.
20 DEFENDANT systematically elected, either through intentional malfeasance or gross
21 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
22 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
23 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
24 for their time worked.

25 86. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
27 and provide them with the requisite compensation, DEFENDANT acted and continues to act
28 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the

1 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
2 consequences to them, and with the despicable intent of depriving them of their property and legal
3 rights, and otherwise causing them injury in order to increase company profits at the expense of
4 these employees.

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

18 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

19 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

23 89. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
24 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
25 Welfare Commission requirements for DEFENDANT's failure to pay these employees for all
26 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
27 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

6 92. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
7 including minimum and overtime compensation and interest thereon, together with the costs of
8 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
9 than those fixed by the Industrial Welfare Commission is unlawful.

10 93. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
11 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
12 they worked, including overtime work.

13 94. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
15 implementing a uniform policy and practice that failed to accurately record overtime worked by
16 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
18 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
19 (12) hours in a workday, and/or forty (40) hours in any workweek.

20 95. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
22 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
23 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
24 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
25 regulations.

26 96. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
27 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
28 overtime compensation for their time worked for DEFENDANT.

1 97. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
2 from the overtime requirements of the law. None of these exemptions are applicable to
3 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
4 other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
5 agreement that would preclude the causes of action contained herein this Complaint. Rather,
6 PLAINTIFF bring this Action on behalf of himself, and the CALIFORNIA CLASS, based on
7 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of
8 California.

9 98. During the CLASS PERIOD, PLAINTIFF and the other members of the
10 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
11 a failure to pay all earned wages.

12 99. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
13 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
14 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
15 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
16 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANT
17 failed to accurately record and pay as evidenced by DEFENDANT's business records and
18 witnessed by employees.

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

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

1 and the other members of the CALIFORNIA CLASS the correct overtime wages for their
2 overtime worked.

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

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

21 **FOURTH CAUSE OF ACTION**

22 **Failure To Provide Required Meal Periods**

23 **(Cal. Lab. Code §§ 226.7 & 512)**

24 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

25 104. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and
26 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
27 Complaint.

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1 105. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
2 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
3 required by the applicable Wage Order and Labor Code. The nature of the work performed by
4 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
5 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
6 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
7 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
8 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
9 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
10 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
11 Members with a second off-duty meal period in some workdays in which these employees were
12 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
13 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
14 and in accordance with DEFENDANT's strict corporate policy and practice.

15 106. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
16 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
17 who were not provided a meal period, in accordance with the applicable Wage Order, one
18 additional hour of compensation at each employee's regular rate of pay for each workday that a
19 meal period was not provided.

20 107. As a proximate result of the aforementioned violations, PLAINTIFF and
21 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
22 and seek all wages earned and due, interest, penalties, expenses and costs of suit.
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1 **FIFTH CAUSE OF ACTION**

2 **Failure To Provide Required Rest Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

8 109. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
9 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
10 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
11 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
12 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
13 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
14 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
15 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other
16 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
17 DEFENDANT and DEFENDANT’s managers. In addition, DEFENDANT failed to compensate
18 PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the
19 applicable Wage Order and Labor Code. As a result, DEFENDANT’s failure to provide
20 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
21 periods is evidenced by DEFENDANT’s business records.

22 110. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
23 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
24 who were not provided a rest period, in accordance with the applicable Wage Order, one
25 additional hour of compensation at each employee’s regular rate of pay for each workday that rest
26 period was not provided.

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

4 **SIXTH CAUSE OF ACTION**

5 **Failure To Pay Wages When Due**

6 **(Cal. Lab. Code § 203)**

7 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

11 113. Cal. Lab. Code § 200 provides that:

12 As used in this article:

- 13 (d) "Wages" includes all amounts for labor performed by employees of every
14 description, whether the amount is fixed or ascertained by the standard of time,
15 task, piece, Commission basis, or other method of calculation.
16 (e) "Labor" includes labor, work, or service whether rendered or performed under
17 contract, subcontract, partnership, station plan, or other agreement if the to be
18 paid for is performed personally by the person demanding payment.

19 114. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
20 an employee, the wages earned and unpaid at the time of discharge are due and payable
21 immediately."

22 115. Cal. Lab. Code § 202 provides, in relevant part, that:

23 If an employee not having a written contract for a definite period quits his or her
24 employment, his or her wages shall become due and payable not later than 72 hours
25 thereafter, unless the employee has given 72 hours previous notice of his or her intention
26 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
27 Notwithstanding any other provision of law, an employee who quits without providing a
28 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
designates a mailing address. The date of the mailing shall constitute the date of payment
for purposes of the requirement to provide payment within 72 hours of the notice of
quitting.

116. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS
Members' employment contract.

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1 117. Cal. Lab. Code § 203 provides:
2 If an employer willfully fails to pay, without abatement or reduction, in accordance with
3 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
4 quits, the wages of the employee shall continue as a penalty from the due date thereof at
the same rate until paid or until an action therefor is commenced; but the wages shall not
continue for more than 30 days.

5 118. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
6 terminated, and DEFENDANT has not tendered payment of wages to these employees who
7 missed meal and rest breaks, as required by law.

8 119. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
9 members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand up to thirty
10 (30) days of pay as penalty for not paying all wages due at time of termination for all employees
11 who terminated employment during the CLASS PERIOD and demand an accounting and payment
12 of all wages due, plus interest and statutory costs as allowed by law.

13 **SEVENTH CAUSE OF ACTION**

14 **Failure To Provide Accurate Itemized Statements**

15 **(Cal. Lab. Code § 226)**

16 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

17
18 120. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
19 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
20 Complaint.

21 121. Cal. Labor Code § 226 provides that an employer must furnish employees with an
22 “accurate itemized” statement in writing showing:

- 23 a. Gross wages earned,
- 24 b. (2) total hours worked by the employee, except for any employee whose
25 compensation is solely based on a salary and who is exempt from payment of
26 overtime under subdivision (a) of Section 515 or any applicable order of the
27 Industrial Welfare Commission,

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- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

122. When DEFENDANT did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

123. In addition to the foregoing, DEFENDANT failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

124. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct

1 wages for all missed meal and rest breaks and the amount of employment taxes which were not
2 properly paid to state and federal tax authorities. These damages are difficult to estimate.
3 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
4 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
5 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
6 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
7 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
8 of the CALIFORNIA CLASS herein).

9 **EIGHTH CAUSE OF ACTION**

10 **Failure To Reimburse Employees for Required Expenses**

11 **(Cal. Lab. Code §§ 2802)**

12 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

13 125. 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
15 Complaint.

16 126. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

20 127. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
21 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
22 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
23 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
24 members for expenses which included, but were not limited to, the use of their personal cell
25 phones, all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and
26 other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal
27 cell phones to execute their essential job duties on behalf of DEFENDANT. DEFENDANT's
28 uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA

1 CLASS members for expenses resulting from the use of their personal cell phones for
2 DEFENDANT within the course and scope of their employment for DEFENDANT. These
3 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
4 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
5 necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,
6 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
7 members for these expenses as an employer is required to do under the laws and regulations of
8 California.

9 128. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
10 by him and the CALIFORNIA CLASS members in the discharge of their job duties for
11 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the
12 statutory rate and costs under Cal. Lab. Code § 2802.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and
15 severally, as follows:

16 1. On behalf of the CALIFORNIA CLASS:

- 17 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
18 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 19 b. An order temporarily, preliminarily and permanently enjoining and restraining
20 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 21 c. An order requiring DEFENDANT to pay all overtime wages and all sums
22 unlawfully withheld from compensation due to PLAINTIFF and the other members
23 of the CALIFORNIA CLASS; and
- 24 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
25 for restitution of the sums incidental to DEFENDANT's violations due to
26 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

27 2. On behalf of the CALIFORNIA CLASS:

- 28 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth

1 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
2 to Cal. Code of Civ. Proc. § 382;

- 3 b. Compensatory damages, according to proof at trial, including compensatory
4 damages for overtime compensation due to PLAINTIFF and the other members of
5 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
6 thereon at the statutory rate;
- 7 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
8 the applicable IWC Wage Order;
- 9 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
10 which a violation occurs and one hundred dollars (\$100) per each member of the
11 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
12 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
13 violation of Cal. Lab. Code § 226
- 14 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
15 penalty from the due date thereof at the same rate until paid or until an action
16 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 17 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
18 CLASS incurred in the course of their job duties, plus interest, and costs of suit.


19 3. On all claims:

- 20 a. An award of interest, including prejudgment interest at the legal rate;
- 21 b. Such other and further relief as the Court deems just and equitable; and
- 22 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
23 including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

24
25 DATED: July 13, 2023

26 **JCL LAW FIRM, APC**

27 By: _____

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Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF


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DEMAND FOR A JURY TRIAL

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

DATED: July 13, 2023

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF