

### SUMMONS (CITACION JUDICIAL)

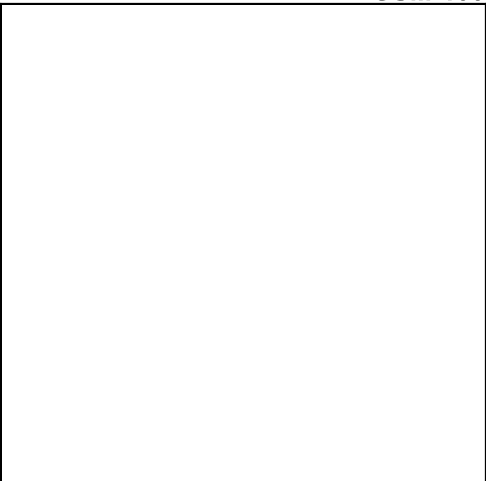
**NOTICE TO DEFENDANT:**

**(AVISO AL DEMANDADO):**

COMMERCE DISTRIBUTION COMPANY LLC, a California limited liability company; SMART & FINAL STORES LLC, a California limited liability company; SMART & FINAL LLC, a Delaware limited liability company; and DOES 1-50, Inclusive,  
**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

PAUL RODRIGUEZ, an individual(s), on behalf of himself and on behalf of all persons similarly situated,



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):*

Los Angeles Superior Court, Stanley Mosk Courthouse  
111 North Hill Street  
Los Angeles, CA 90012

CASE NUMBER:  
*(Número del Caso):* 22STCV11092

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) 599-829

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

DATE:

*(Fecha)* 03/30/2022

Clerk, by M. Arellanes, Deputy  
*(Secretario)* Sherri R. Carter Executive Officer / Clerk of Court *(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)*:



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Attorneys for Plaintiff PAUL RODRIGUEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF LOS ANGELES**

PAUL RODRIGUEZ, an individual, on behalf  
of himself and on behalf of all persons similarly  
situated,

Plaintiff,

v.

COMMERCE DISTRIBUTION COMPANY  
LLC, a California limited liability company;  
SMART & FINAL STORES LLC, a California  
limited liability company; SMART & FINAL  
LLC, a Delaware limited liability company; and  
DOES 1-50, Inclusive,

Defendants.

Case No: **22STCV11092**

**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 ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN

DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;  
8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802; and,  
9) UNLAWFUL DEDUCTIONS.

**DEMAND FOR A JURY TRIAL**

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

**THE PARTIES**

1. Defendant COMMERCE DISTRIBUTION COMPANY LLC (“Defendant Commerce Distribution Company”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Los Angeles.

2. Defendant SMART & FINAL STORES LLC (“Defendant Smart & Final Stores”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Los Angeles

3. Defendant SMART & FINAL LLC (“Defendant Smart & Final”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Los Angeles.

4. Defendant Commerce Distribution, Defendant Smart & Final Stores, and Defendant Smart & Final were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

5. DEFENDANTS operate food distribution centers and grocery in the State of California, including Los Angeles County, where PLAINTIFF worked.

6. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant

1 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the  
2 true names and capacities of Does 1 through 50, inclusive, when they are ascertained.  
3 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that  
4 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter  
5 collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one  
6 or more of the events and happenings that proximately caused the injuries and damages  
7 hereinafter alleged.

8 7. The agents, servants, and/or employees of the Defendants and each of them acting  
9 on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as  
10 the agent, servant and/or employee of the Defendants, and personally participated in the conduct  
11 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.  
12 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all  
13 Defendants are jointly and severally liable to PLAINTIFF and the other members of the  
14 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the  
15 Defendants’ agents, servants and/or employees.

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

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

27 10. PLAINTIFF has been employed by DEFENDANT in California from since 1996  
28 and was at all times classified by DEFENDANT 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.

1           11. PLAINTIFF brings this Class Action on behalf of himself and a California class,  
2 defined as all persons who are or previously were employed by Defendant Commerce Distribution  
3 Company and/or Defendant Smart & Final Stores and/or Defendant Smart & Final in California  
4 and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the  
5 period beginning four (4) years prior to the filing of this Complaint and ending on the date as  
6 determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate  
7 claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

8           12. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA  
9 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
10 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to  
11 lawfully compensate these employees.

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

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

#### **JURISDICTION AND VENUE**

20           15. This has jurisdiction over this Action pursuant to California Code of Civil  
21 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This  
22 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of  
23 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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

**THE CONDUCT**

1  
2           17. In violation of the applicable sections of the California Labor Code and the  
3 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a  
4 matter of company policy, practice and procedure, intentionally, knowingly and systematically  
5 failed to provide legally compliant meal and rest periods, failed to accurately compensate  
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest  
7 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all  
8 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to compensate  
9 PLAINTIFF and the other members of the CALIFORNIA CLASS overtime, double time, meal  
10 period premiums and sick pay at the correct regular rate of pay, and failed to issue to PLAINTIFF  
11 and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing,  
12 among other things, the total hours worked and all applicable hourly rates in effect during the pay  
13 periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS'  
14 uniform policies and practices are intended to purposefully avoid the accurate and full payment  
15 for all time worked as required by California law which allows DEFENDANTS to illegally profit  
16 and gain an unfair advantage over competitors who comply with the law. To the extent equitable  
17 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS  
18 PERIOD should be adjusted accordingly.

19       **A. Meal Period Violations**

20           18. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS  
21 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,  
22 meaning the time during which an employee is subject to the control of an employer, including  
23 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS  
24 PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work  
25 without paying them for all the time they were under DEFENDANTS' control. Specifically, as a  
26 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,  
27 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to  
28 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work

1 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.  
2 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result,  
3 the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and  
4 overtime wages by regularly working without their time being accurately recorded and without  
5 compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform  
6 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all  
7 time worked is evidenced by DEFENDANTS' business records.

8         19. From time-to-time during the CLASS PERIOD, as a result of their rigorous work  
9 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other  
10 CALIFORNIA CLASS Members were from time-to-time unable to take thirty (30) minute off-  
11 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and  
12 other CALIFORNIA CLASS Members were required from time-to-time to perform work as  
13 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a  
14 meal break. Further, DEFENDANTS from time-to-time failed to provide PLAINTIFF and  
15 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which  
16 these employees were required by DEFENDANTS to work ten (10) hours of work from time-to-  
17 time. Additionally, DEFENDANTS from time-to-time failed to provide PLAINTIFF and  
18 CALIFORNIA CLASS Members with a third off-duty meal period for some workdays in which  
19 these employees were required by DEFENDANTS to work twelve (12) hours of work from time-  
20 to-time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS  
21 Members does not qualify for limited and narrowly construed "on-duty" meal period exception.  
22 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS  
23 Members were, from time to time, required to remain on duty, and on call. Further, from time to  
24 time, PLAINTIFF and other CALIFORNIA CLASS Members were required to remain on duty,  
25 on call, and/or on the premises, and/or to carry cordless communication devices and respond to  
26 communications received on said devices during what was supposed to be their off-duty meal  
27 periods. PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks  
28

1 without additional compensation and in accordance with DEFENDANTS' strict corporate policy  
2 and practice.

3 **B. Rest Period Violations**

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

25 **C. Unreimbursed Business Expenses**

26 21. DEFENDANTS as a matter of corporate policy, practice, and procedure,  
27 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF  
28 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and



1 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf  
2 of DEFENDANTS. Under California Labor Code Section 2802, employers are required to  
3 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.  
4 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all  
5 necessary expenditures or losses incurred by the employee in direct consequence of the discharge  
6 of his or her duties, or of his or her obedience to the directions of the employer, even though  
7 unlawful, unless the employee, at the time of obeying the directions, believed them to be  
8 unlawful."

9         22. In the course of their employment, DEFENDANTS required PLAINTIFF and  
10 other CALIFORNIA CLASS Members to use their personal cell phone to correspond and  
11 coordinate tasks with their supervisor and/or other employees as a result of and in furtherance of  
12 their job duties as employees for DEFENDANTS. But for the use of their own personal cell  
13 phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential  
14 job duties, including but not limited to sending and receiving work-related communications from  
15 DEFENDANTS. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and  
16 other CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in  
17 the course of their employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA  
18 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related  
19 to the use of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

20         **D. Wage Statement Violations**

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

1           24. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
2 CALIFORNIA CLASS Members missed meal and rest breaks, or were not paid for all hours  
3 worked, DEFENDANTS failed to provide PLAINTIFF and other CALIFORNIA CLASS  
4 Members with complete and accurate wage statements that include, among other things, the total  
5 hours worked, all applicable hourly rates in effect during the pay period, and the corresponding  
6 amount of time worked at each hourly rate.

7           25. In addition to the violations described above, DEFENDANTS, from time to time,  
8 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements  
9 that comply with Cal. Lab. Code § 226.

10           26. As a result, DEFENDANTS issued PLAINTIFF and the other members of the  
11 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,  
12 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an  
13 unintentional payroll error due to clerical or inadvertent mistake.

14       **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

15           27. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and  
16 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA  
17 CLASS for all hours worked.

18           28. During the CLASS PERIOD, from time-to-time DEFENDANTS required  
19 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work on days he was  
20 not scheduled to work, including responding to work-related communications received on his  
21 personal cell phone from DEFENDANTS' managers for work-related purposes. This resulted in  
22 PLAINTIFF and other members of the CALIFORNIA CLASS having to work while off-the-  
23 clock.

24           29. DEFENDANTS directed and directly benefited from the uncompensated off-the-  
25 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

26           30. DEFENDANTS controlled the work schedules, duties, protocols, applications,  
27 assignments, and employment conditions of PLAINTIFF and the other members of the  
28 CALIFORNIA CLASS.

1           31. DEFENDANTS were able to track the amount of time PLAINTIFF and the other  
2 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to  
3 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all  
4 wages earned and owed for all the work they performed, including but not limited to, the time  
5 PLAINTIFF and members of the CALIFORNIA CLASS spent during non-production periods  
6 and while waiting to load DEFENDANTS' trucks with goods.

7           32. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-  
8 exempt employees, subject to the requirements of the California Labor Code.

9           33. DEFENDANTS' policies and practices deprived PLAINTIFF and the other  
10 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages  
11 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the  
12 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)  
13 hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

14           34. DEFENDANTS knew or should have known that PLAINTIFF and the other  
15 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

16           35. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
17 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit  
18 for the time spent performing work, waiting to load DEFENDANTS' trucks with goods and  
19 working while clocked out for meal periods. DEFENDANTS' uniform policy and practice to not  
20 pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in  
21 accordance with applicable law is evidenced by DEFENDANTS' business records.

22       **F. Regular Rate Violation- Overtime, Double Time, Meal and Rest Period Premiums, and**  
23       **Sick Pay**

24           36. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and  
25 continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS  
26 members for their overtime and double time hours worked, meal and rest period premiums, and  
27 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages  
28 due them for working overtime without compensation at the correct overtime and double time

1 rates, meal and rest period premiums, and sick pay rates. DEFENDANTS’ uniform policy and  
2 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and  
3 double time worked, meal and rest period premiums, and sick pay in accordance with applicable  
4 law is evidenced by DEFENDANTS’ business records.

5 37. State law provides that employees must be paid overtime at one-and-one-half times  
6 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS members were  
7 compensated at an hourly rate plus incentive pay that was tied to specific elements of an  
8 employee’s performance.

9 38. The second component of PLAINTIFF’S and other CALIFORNIA CLASS  
10 members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid  
11 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for  
12 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly  
13 basis with bonus compensation when the employees met the various performance goals set by  
14 DEFENDANTS.

15 39. However, from-time-to-time, when calculating the regular rate of pay, in those pay  
16 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double  
17 time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-  
18 discretionary compensation, DEFENDANTS failed to accurately include the non-discretionary  
19 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked  
20 rather than just all non-overtime hours worked. As a matter of law, the compensation received  
21 by PLAINTIFF and other CALIFORNIA CLASS members must be included in the “regular rate  
22 of pay.” The failure to do so has resulted in a systematic underpayment of overtime and double  
23 time compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other  
24 CALIFORNIA CLASS members by DEFENDANTS. Specifically, California Labor Code  
25 Section 246 mandates that paid sick time for non-employees shall be calculated in the same  
26 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid  
27 sick time, whether or not the employee actually works overtime in that workweek.  
28 DEFENDANTS’ conduct, as articulated herein, by failing to include the incentive compensation

1 as part of the “regular rate of pay” for purposes of overtime, double time, paid meal and rest period  
2 premium payments, and/or paid sick pay compensation was in violation of Cal. Lab. Code § 246  
3 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or  
4 204.

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

16 **G. Violation for Untimely Payment of Wages**

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

22 **H. Unlawful Deductions**

23 42. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF  
24 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do  
25 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,  
26 DEFENDANTS violated Labor Code § 221.

27 43. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take  
28 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.

1 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)  
2 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to  
3 provide PLAINTIFF with a second off-duty meal period each workday in which he was required  
4 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF  
5 with a rest break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for  
6 the rest break. DEFENDANTS' policy caused PLAINTIFF to remain on-call, on-duty and/or on-  
7 premises during what was supposed to be his off-duty meal periods. PLAINTIFF therefore  
8 forfeited meal and rest breaks without additional compensation and in accordance with  
9 DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided  
10 PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code § 226. To date,  
11 DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double time  
12 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.  
13 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of  
14 \$75,000.

15 **I. CLASS ACTION ALLEGATIONS**

16 44. PLAINTIFF brings the First through Ninth Causes of Action as a class action  
17 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or  
18 previously were employed by Defendant Commerce Distribution Company and/or Defendant  
19 Smart & Final Stores and/or Defendant Smart & Final in California and classified as non-exempt  
20 employees ("CALIFORNIA CLASS") during the period beginning four years prior to the filing  
21 of the Complaint and ending on a date determined by the Court ("CLASS PERIOD").

22 45. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been  
23 deprived of wages and penalties from unpaid wages earned and due, including but not limited to  
24 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,  
25 illegal meal and rest period policies, failure to reimburse for business expenses, failure to  
26 compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure  
27 to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and  
28 expenses.

1           46. The members of the class are so numerous that joinder of all class members is  
2 impractical.

3           47. Common questions of law and fact regarding DEFENDANTS' conduct, including  
4 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to  
5 provide legally compliant meal and rest periods, failure to reimburse for business expenses, failure  
6 to provide accurate itemized wage statements, and failure to ensure they are paid at least minimum  
7 wage and overtime, exist as to all members of the class and predominate over any questions  
8 affecting solely any individual members of the class. Among the questions of law and fact  
9 common to the class are:

- 10           a. Whether DEFENDANTS maintained legally compliant meal period policies and  
11 practices;
- 12           b. Whether DEFENDANTS maintained legally compliant rest period policies and  
13 practices;
- 14           c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA  
15 CLASS Members accurate premium payments for missed meal and rest periods;
- 16           d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA  
17 CLASS Members accurate overtime and double time wages;
- 18           e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA  
19 CLASS Members at least minimum wage for all hours worked;
- 20           f. Whether DEFENDANTS failed to compensate PLAINTIFF and the  
21 CALIFORNIA CLASS Members for required business expenses;
- 22           g. Whether DEFENDANTS unlawfully deducted earned wages from PLAINTIFF  
23 and the CALIFORNIA CLASS Members' pay;
- 24           h. Whether DEFENDANTS issued legally compliant wage statements;
- 25           i. Whether DEFENDANTS committed an act of unfair competition by  
26 systematically failing to record and pay PLAINTIFF and the other members of the  
27 CALIFORNIA CLASS for all time worked;
- 28

1           j. Whether DEFENDANTS committed an act of unfair competition by  
2           systematically failing to record all meal and rest breaks missed by PLAINTIFF  
3           and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed  
4           the benefit of this work, required employees to perform this work and permits or  
5           suffers to permit this work;

6           k. Whether DEFENDANTS committed an act of unfair competition in violation of  
7           the UCL, by failing to provide the PLAINTIFF and the other members of the  
8           CALIFORNIA CLASS with the legally required meal and rest periods.

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

11          49. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has  
12          the same interests as the other members of the class.

13          50. PLAINTIFF will fairly and adequately represent and protect the interests of the  
14          CALIFORNIA CLASS Members.

15          51. PLAINTIFF retained able class counsel with extensive experience in class action  
16          litigation.

17          52. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the  
18          interests of the other CALIFORNIA CLASS Members.

19          53. There is a strong community of interest among PLAINTIFF and the members of  
20          the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are  
21          sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries  
22          sustained.

23          54. The questions of law and fact common to the CALIFORNIA CLASS Members  
24          predominate over any questions affecting only individual members, including legal and factual  
25          issues relating to liability and damages.

26          55. A class action is superior to other available methods for the fair and efficient  
27          adjudication of this controversy because joinder of all class members is impractical. Moreover,  
28          since the damages suffered by individual members of the class may be relatively small, the



1 expense and burden of individual litigation makes it practically impossible for the members of the  
2 class individually to redress the wrongs done to them. Without class certification and  
3 determination of declaratory, injunctive, statutory and other legal questions within the class  
4 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will  
5 create the risk of:

- 6 a. Inconsistent or varying adjudications with respect to individual members of the  
7 CALIFORNIA CLASS which would establish incompatible standards of conduct  
8 for the parties opposing the CALIFORNIA CLASS; and/or,
- 9 b. Adjudication with respect to individual members of the CALIFORNIA CLASS  
10 which would as a practical matter be dispositive of the interests of the other  
11 members not party to the adjudication or substantially impair or impeded their  
12 ability to protect their interests.

13 56. Class treatment provides manageable judicial treatment calculated to bring an  
14 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of  
15 the conduct of DEFENDANTS.

16 **FIRST CAUSE OF ACTION**

17 **Unlawful Business Practices**

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

19 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

20 57. 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 58. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
24 Code § 17021.

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

1 Any person who engages, has engaged, or proposes to engage in unfair competition  
2 may be enjoined in any court of competent jurisdiction. The court may make such  
3 orders or judgments, including the appointment of a receiver, as may be necessary  
4 to prevent the use or employment by any person of any practice which constitutes  
5 unfair competition, as defined in this chapter, or as may be necessary to restore to  
6 any person in interest any money or property, real or personal, which may have  
7 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §  
8 17203).

9  
10 60. By the conduct alleged herein, DEFENDANT has engaged and continues to  
11 engage in a business practice which violates California law, including but not limited to, the  
12 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
13 including Sections 201, 202, 203, 204, 221, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,  
14 1198, 2802, for which this Court should issue declaratory and other equitable relief pursuant to  
15 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
16 constitute unfair competition, including restitution of wages wrongfully withheld.

17  
18 61. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair  
19 in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous  
20 or substantially injurious to employees, and were without valid justification or utility for which  
21 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California  
22 Business & Professions Code, including restitution of wages wrongfully withheld.

23  
24 62. By the conduct alleged herein, DEFENDANT's practices were deceptive and  
25 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally  
26 mandated meal and rest periods and the required amount of compensation for missed meal and  
27 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the  
28 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.  
Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,  
pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

1           64. By the conduct alleged herein, DEFENDANT’s practices were also unfair and  
2 deceptive in that DEFENDANT’s uniform policies, practices and procedures failed to provide  
3 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members  
4 as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

13           67. By and through the unlawful and unfair business practices described herein,  
14 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the  
15 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and  
16 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the  
17 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT  
18 to unfairly compete against competitors who comply with the law.

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

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

1 70. PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
2 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,  
3 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
4 engaging in any unlawful and unfair business practices in the future.

5 71. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
6 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of  
7 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a  
8 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other  
9 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal  
10 and economic harm unless DEFENDANT is restrained from continuing to engage in these  
11 unlawful and unfair business practices.

12 **SECOND CAUSE OF ACTION**

13 **Failure To Pay Minimum Wages**

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

15 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

19 73. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim  
20 for DEFENDANT’S willful and intentional violations of the California Labor Code and the  
21 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate  
22 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

25 75. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
26 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than  
27 the minimum so fixed is unlawful.

28

1           76.     Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,  
2 including minimum wage compensation and interest thereon, together with the costs of suit.

3           77.     DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the  
4 other members of the CALIFORNIA CLASS without regard to the correct amount of time they  
5 worked. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and  
6 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the  
7 CALIFORNIA CLASS.

8           78.     DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,  
9 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
10 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF  
11 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

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

18           80.     As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,  
19 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
20 minimum wage compensation for their time worked for DEFENDANT.

21           81.     During the CLASS PERIOD, PLAINTIFF and the other members of the  
22 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a  
23 failure to pay all earned wages.

24           82.     By virtue of DEFENDANT’S unlawful failure to accurately pay all earned  
25 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true  
26 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have  
27 suffered and will continue to suffer an economic injury in amounts which are presently unknown  
28 to them, and which will be ascertained according to proof at trial.

1           83.     DEFENDANT knew or should have known that PLAINTIFF and the other  
2 members of the CALIFORNIA CLASS are under-compensated for their time worked.  
3 DEFENDANT systematically elected, either through intentional malfeasance or gross  
4 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice  
5 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay  
6 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages  
7 for their time worked.

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

16           85.     PLAINTIFF and the other members of the CALIFORNIA CLASS therefore  
17 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the  
18 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the  
19 California Labor Code and/or other applicable statutes. To the extent minimum wage  
20 compensation is determined to be owed to the CALIFORNIA CLASS Members who have  
21 terminated their employment, DEFENDANT’S conduct also violates Labor Code §§ 201 and/or  
22 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.  
23 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS  
24 Members. DEFENDANT’S conduct as alleged herein was willful, intentional and not in good  
25 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and  
26 recover statutory costs.

27  
28 ///

1 **THIRD CAUSE OF ACTION**

2 **Failure To Pay Overtime Compensation**

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

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

5 86. 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 87. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim  
9 for DEFENDANT's willful and intentional violations of the California Labor Code and the  
10 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees  
11 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,  
12 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

15 89. Cal. Lab. Code § 510 further provides that employees in California shall not be  
16 employed more than eight (8) hours per workday and more than forty (40) hours per workweek  
17 unless they receive additional compensation beyond their regular wages in amounts specified by  
18 law.

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

23 91. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members  
24 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time  
25 they worked, including overtime work.

26 92. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
28 implementing a uniform policy and practice that failed to accurately record overtime worked by

1 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to  
2 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,  
3 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve  
4 (12) hours in a workday, and/or forty (40) hours in any workweek.

5 93. In committing these violations of the California Labor Code, DEFENDANT  
6 inaccurately recorded overtime worked and consequently underpaid the overtime worked by  
7 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal  
8 attempt to avoid the payment of all earned wages, and other benefits in violation of the California  
9 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and  
10 regulations.

11 94. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
12 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full  
13 compensation for overtime worked.

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

22 96. During the CLASS PERIOD, PLAINTIFF and the other members of the  
23 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,  
24 constituting a failure to pay all earned wages.

25 97. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of  
26 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the  
27 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even  
28 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,



1 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as  
2 evidenced by DEFENDANT's business records and witnessed by employees.

3 98. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned  
4 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all  
5 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA  
6 CLASS have suffered and will continue to suffer an economic injury in amounts which are  
7 presently unknown to them, and which will be ascertained according to proof at trial.

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

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

22 101. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore  
23 request recovery of all unpaid wages, including overtime wages, according to proof, interest,  
24 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a  
25 sum as provided by the California Labor Code and/or other applicable statutes. To the extent  
26 minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS  
27 Members who have terminated their employment, DEFENDANT's conduct also violates Labor  
28 Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time

1 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these  
2 CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful,  
3 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS  
4 Members are entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

8 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

26 104. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
27 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members  
28 who were not provided a meal period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday that a  
2 meal period was not provided.

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

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

9 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

10 106. 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  
12 Complaint.

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

25 108. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
26 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members  
27 who were not provided a rest period, in accordance with the applicable Wage Order, one  
28

1 additional hour of compensation at each employee’s regular rate of pay for each workday that rest  
2 period was not provided.

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code §§ 226)**

9 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

10 110. 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  
12 Complaint.

13 111. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
14 “accurate itemized” statement in writing showing:

- 15 a. Gross wages earned,
- 16 b. (2) total hours worked by the employee, except for any employee whose  
17 compensation is solely based on a salary and who is exempt from payment  
18 of overtime under subdivision (a) of Section 515 or any applicable order of  
19 the Industrial Welfare Commission,
- 20 c. the number of piece-rate units earned and any applicable piece rate if the employee  
21 is paid on a piece-rate basis,
- 22 d. all deductions, provided that all deductions made on written orders of the employee  
23 may be aggregated and shown as one item,
- 24 e. net wages earned,
- 25 f. the inclusive dates of the period for which the employee is paid,
- 26 g. the name of the employee and his or her social security number, except that by  
27 January 1, 2008, only the last four digits of his or her social security number of an  
28

1 employee identification number other than social security number may be shown  
2 on the itemized statement,

3 h. the name and address of the legal entity that is the employer, and

4 i. all applicable hourly rates in effect during the pay period and the corresponding  
5 number of hours worked at each hourly rate by the employee.

6 112. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA  
7 CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest  
8 period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide  
9 PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage  
10 statements which failed to show, among other things, the total hours worked and all applicable  
11 hourly rates in effect during the pay period and the corresponding amount of time worked at each  
12 hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods. Further,  
13 from time to time, DEFENDANTS failed to issue wage statements that provided the accurate  
14 name and address of the legal entity that is the employer of PLAINTIFF and other CALIFORNIA  
15 CLASS Members. Further, from time to time, DEFENDANT included hours for PTO and  
16 Holiday into the calculation for total hours worked, notwithstanding the fact that hours for PTO  
17 and Holiday are not considered hours worked for purposes of Cal. Lab. Code § 226(a)(2). Thus,  
18 DEFENDANT from time to time issued itemized wage statements that violated Cal. Lab. Code §  
19 226(a)(2).

20 113. In addition to the foregoing, DEFENDANTS failed to provide itemized wage  
21 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the  
22 requirements of California Labor Code Section 226.

23 114. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code  
24 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA  
25 CLASS. These damages include, but are not limited to, costs expended calculating the correct  
26 wages for all missed meal and rest breaks and the amount of employment taxes which were not  
27 properly paid to state and federal tax authorities. These damages are difficult to estimate.  
28 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover

1 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation  
2 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period  
3 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no  
4 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member  
5 of the CALIFORNIA CLASS herein).

6 **SEVENTH CAUSE OF ACTION**

7 **Failure To Pay Wages When Due**

8 **(Cal. Lab. Code §§ 203)**

9 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

10 115. 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  
12 Complaint.

13 116. Cal. Lab. Code § 200 provides that:

14 As used in this article:

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

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

24 118. Cal. Lab. Code § 202 provides, in relevant part, that:

25 If an employee not having a written contract for a definite period quits his or her  
26 employment, his or her wages shall become due and payable not later than 72 hours  
27 thereafter, unless the employee has given 72 hours previous notice of his or her intention  
28 to quit, in which case the employee is entitled to his or her wages at the time of quitting.  
Notwithstanding any other provision of law, an employee who quits without providing a  
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.

1 119. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS  
2 Members' employment contract.

3 120. Cal. Lab. Code § 203 provides:

4 If an employer willfully fails to pay, without abatement or reduction, in accordance with  
5 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who  
6 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.

7 121. The employment of PLAINTIFF and many CALIFORNIA CLASS Members  
8 terminated, and DEFENDANT has not tendered payment of wages to these employees who were  
9 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as  
10 required by law.

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

16 **EIGHTH CAUSE OF ACTION**

17 **Failure To Reimburse Employees For Required Expenses**

18 **(Cal. Lab. Code §§ 2802)**

19 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

20 123. 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.

23 124. Cal. Lab. Code § 2802 provides, in relevant part, that:

24 An employer shall indemnify his or her employee for all necessary expenditures or losses  
25 incurred by the employee in direct consequence of the discharge of his or her 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

26 125. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal.  
27 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the  
28 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for

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

15 126. 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  
17 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with  
18 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

### 19 **NINTH CAUSE OF ACTION**

#### 20 **Unlawful Deductions from PLAINTIFF and CLASS MEMBERS Paychecks**

21 **[Cal. Labor Code §§ 221 and 223]**

22 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

23 127. PLAINTIFF incorporates herein by specific reference, as though fully set forth,  
24 the allegations in the preceding paragraphs.

25 128. During the CLASS PERIOD, DEFENDANT regularly and consistently  
26 maintained corporate policies and procedures designed to reduce labor costs by reducing or  
27 minimizing the amount of compensation paid to its employees, including but not limited to,  
28 overtime compensation.



1 129. DEFENDANT made deductions from PLAINTIFF and members of the  
2 CALIFORNIA CLASS' paychecks for unspecified reasons.

3 130. Labor Code § 221 provides it is unlawful for any employer to collect or receive  
4 from an employee any part of wages theretofore paid by employer to employee.

5 131. Labor Code § 223 provides that where any statute or contract requires an employer  
6 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while  
7 purporting to pay the wage designated by statute or by contract. Labor Code section 225 further  
8 provides that the violation of any provision of Labor Code §§ 221 and 223 is a misdemeanor.

9 132. As a result of the conduct alleged above, DEFENDANTS unlawfully collected or  
10 received from PLAINTIFF and the members of the CALIFORNIA CLASS' part of the wages  
11 paid to their employees.

12 133. Wherefore, PLAINTIFF and the members of the CALIFORNIA CLASS demand  
13 the return of all wages unlawfully deducted from the paychecks, including interest thereon,  
14 penalties, reasonable attorneys' fees, and costs of suit pursuant to Labor Code §§ 225.5 and 1194.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and  
17 severally, as follows:

18 1. On behalf of the CALIFORNIA CLASS:

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

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2. On behalf of the CALIFORNIA CLASS:

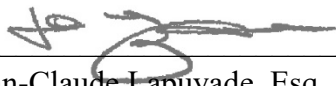
- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
- e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. 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 costs of suit, as allowable under the law.

DATED: March 30, 2022

**JCL LAW FIRM, APC**

By:   
Jean-Claude Lapuyade, Esq.  
Attorney for PLAINTIFF

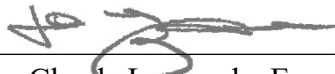
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**DEMAND FOR A JURY TRIAL**

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

DATED: March 30, 2022

**JCL LAW FIRM, APC**

By:   
\_\_\_\_\_  
Jean-Claude Lapuyade, Esq.  
Attorney for PLAINTIFF