

**SUMMONS
(CITACION JUDICIAL)**

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

DONSUEMOR, INC., a California Corporation; and DOES 1-50,
Inclusive

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

RIGOBERTO MONROY, an individual, on behalf of himself and on
behalf of all persons similarly situated

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

ELECTRONICALLY FILED
Superior Court of California
County of Alameda

05/27/2022

Chad Finke, Executive Officer / Clerk of the Court

By: C. Clark Deputy

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.

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/), 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.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):

Alameda Superior Court, Hayward Hall of Justice
24405 Amador Street
Hayward, CA 94544

CASE NUMBER: **22CV011917**
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jean-Claude Lapuyade, Esq. SBN: 248676 Tel: (619) 599-8292 Fax: (619) 599-8291

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

Chad Finke, Executive Officer / Clerk of the Court

DATE: **05/27/2022**
(Fecha)

Clerk, by C. Clark , Deputy
(Secretario) (Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served

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

3. on behalf of (specify):
under: 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):

[SEAL]



ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
05/27/2022 at 02:45:15 PM
By: Cheryl Clark, Deputy Clerk

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13 Attorneys for Plaintiff RIGOBERTO MONROY

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF ALAMEDA**

17 RIGOBERTO MONROY, an individual, on
behalf of himself and on behalf of all persons
18 similarly situated,

19 Plaintiff,
20 v.

21 DONSUEMOR, INC., a California
Corporation; and DOES 1-50, Inclusive,
22 Defendants.
23

Case No: **22CV011917**

CLASS ACTION COMPLAINT FOR:

- 1) RETALIATION IN VIOLATION OF CAL. LAB. CODE § 1102.5;
- 2) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
- 3) VIOLATION OF GOV'T CODE § 12940 – DISABILITY DISCRIMINATION.
- 4) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 5) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 6) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 7) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF

CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
8) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
9) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

Plaintiff RIGOBERTO MONROY (“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 DONSUEMOR, INC. (“DEFENDANT” and/or “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. DEFENDANT manufactures and retails baked goods products to a variety of specialty and grocery stores in the state of California, including in Alameda County, where PLAINTIFF worked.

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

4. The agents, servants, and/or employees of the Defendants and each of them acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as

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

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

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

18 7. PLAINTIFF was employed by DEFENDANTS in California from June of 2000 to
19 February of 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
20 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
21 minimum and overtime wages due for all time worked.

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

28

1 in this County and/or conduct substantial business in this County, and (ii) committed the wrongful
2 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

3 **THE CONDUCT**

4 **Plaintiff's Individual Claims**

5 14. PLAINTIFF was employed by DEFENDANTS in California since from June of
6 2000 to February of 2020.

7 15. Throughout his employment with DEFENDANTS, PLAINTIFF was treated
8 differently and unfairly by DEFENDANTS and its agents, all in retaliation against PLAINTIFF
9 for various protected activities.

10 16. In or around 2016 through February of 2020, PLAINTIFF complained to his
11 supervisor, Ernesto Vera, about the discriminatory and harassing treatment he made to
12 PLAINTIFF regarding PLAINTIFF'S disability. The complaint was ignored, and the harassment
13 continued until PLAINTIFF was terminated in February of 2020. PLAINTIFF reported the
14 unlawful conduct to DEFENDANTS, but PLAINTIFF'S report fell on deaf ears.

15 17. Shortly thereafter, in or around February of 2020, in response to PLAINTIFF'S
16 complaints to DEFENDANT, DEFENDANT terminated PLAINTIFF.

17 18. Further, PLAINTIFF is informed and believes, and upon such information and
18 belief alleges, that, during PLAINTIFF's employment with DEFENDANTS and at the time of his
19 termination, PLAINTIFF was treated differently and unfairly by DEFENDANTS and its agents,
20 all in discrimination against PLAINTIFF because of his disability and medical condition.
21 PLAINTIFF has a disability and medical condition called vitiligo, which causes discoloration of
22 the skin on his hands. PLAINTIFF never felt that he was accepted by DEFENDANTS because of
23 his disability and medical condition.

24 19. PLAINTIFF is informed and believes, and upon such information and belief
25 alleges, that, during PLAINTIFF'S employment with DEFENDANTS and at the time of his
26 termination, DEFENDANT hired and treated its employees who did not have a disability and
27 medical condition far better than DEFENDANT treated PLAINTIFF, and solely on the basis that
28 PLAINTIFF has vitiligo.

1 20. Specifically, in or around 2016, DEFENDANTS began to institute a series of
2 discriminatory acts against PLAINTIFF. For example, PLAINTIFF’S supervisor, Ernesto Vera,
3 harassed PLAINTIFF for the discoloration of PLAINTIFF’S skin, and Vera even encouraged
4 other employees to harass PLAINTIFF about the discoloration. Anthony Kahey, another one of
5 DEFENDANTS’ employees would harass PLAINTIFF about PLAINTIFF’S medical condition,
6 which was subsequently reported to Vera. PLAINTIFF was told not to report the incidents of
7 harassment to Human Resources. PLAINTIFF is informed and believes, and upon such
8 information and belief, alleges that, DEFENDANTS’ adverse employment actions against
9 PLAINTIFF were made to PLAINTIFF on the basis that PLAINTIFF has a disability and medical
10 condition. Following the foregoing series of incidents, and following the reporting of
11 DEFENDANT’S discriminatory and adverse employment actions, DEFENDANT terminated
12 PLAINTIFF.

13 21. PLAINTIFF is informed and believes, and upon such information and belief
14 alleges, that, DEFENDANT’S conduct in terminating PLAINTIFF was part of a pattern of
15 behavior by DEFENDANT aimed at removing employees with disabilities and medical
16 conditions like PLAINTIFF from DEFENDANT’S workforce.

17 22. PLAINTIFF filed a complaint with the California Department of Fair Employment
18 and Housing and received a “right to sue” letter on June 16, 2021, thereby exhausting his
19 administrative remedies. (See Exhibit #1.)

20 **Wage and Hour Class Action Claims**

21 23. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
23 matter of company policy, practice and procedure, intentionally, knowingly and systematically
24 failed to provide legally compliant meal and rest periods, failed to accurately compensate
25 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
26 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
27 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to compensate
28 PLAINTIFF and other members of the CALIFORNIA CLASS meal rest premiums at the regular

1 rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the
2 accurate and full payment for all time worked as required by California law which allows
3 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply
4 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
5 against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

6 **A. Meal Period Violations**

7 24. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
8 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
9 meaning the time during which an employee is subject to the control of an employer, including
10 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
11 PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work
12 without paying them for all the time they were under DEFENDANTS' control. Specifically, as a
13 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
14 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
15 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work
16 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.
17 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. More
18 specifically, from time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
19 required by DEFENDANTS to work through their meal breaks in order to meet DEFENDANTS'
20 prescribed labor hours to perform all the tasks required of them by DEFENDANTS. PLAINTIFF
21 and other CALIFORNIA CLASS Members were required to perform tasks such as, including but
22 not limited to, fixing DEFENDANTS' facility's machines and responding to supervisors on work-
23 related tasks. Additionally, PLAINTIFF and other CALIFORNIA CLASS Members were
24 required to perform as much work as possible and as quickly as possible in order to meet
25 DEFENDANTS' strict performance and production requirements. As a result, the PLAINTIFF
26 and other CALIFORNIA CLASS Members forfeited minimum wage and overtime wages by
27 regularly working without their time being accurately recorded and without compensation at the
28 applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not

1 to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced
2 by DEFENDANTS' business records.

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

19 **B. Rest Period Violations**

20 26. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
21 CALIFORNIA CLASS members were also required from time to time to work in excess of four
22 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
23 requirements and DEFENDANTS' inadequate staffing. More specifically, from time to time,
24 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to
25 work through their rest breaks in order to meet DEFENDANTS' prescribed labor hours to perform
26 all the tasks required of them by DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS
27 Members were required to perform tasks such as, fixing DEFENDANTS' facility's machines and
28 responding to supervisors on work-related tasks. Additionally, PLAINTIFF and other

1 CALIFORNIA CLASS Members were required to perform as much work as possible and as
2 quickly as possible in order to meet DEFENDANTS' strict performance and production
3 requirements.

4 27. Further, for the same reasons these employees were denied their first rest periods
5 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time
6 to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between
7 six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
8 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they
9 were provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were,
10 from time to time, required to remain on premises, on duty and/or on call. PLAINTIFF and other
11 CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As
12 a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF
13 and other CALIFORNIA CLASS Members were from time to time denied their proper rest
14 periods by DEFENDANTS and DEFENDANTS' managers.

15 **C. Unlawful Rounding Violations**

16 28. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
17 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
18 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
19 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and
20 practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
21 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
22 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
23 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
24 these employees for all their time worked, including the applicable overtime compensation for
25 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from time
26 to time, forfeited compensation for their time worked by working without their time being
27 accurately recorded and without compensation at the applicable overtime rates.

28

1 29. Further, the mutability of DEFENDANTS’ timekeeping system and unlawful
2 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members’ time
3 being inaccurately recorded. As a result, from time to time, DEFENDANTS’ unlawful rounding
4 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
5 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
6 off-duty meal break. Additionally, DEFENDANTS’ unlawful rounding policy and practice
7 caused PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by
8 DEFENDANTS for more than ten (10) hours during a shift without receiving a second off-duty
9 meal break.

10 **D. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
11 **Sick Pay**

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

21 31. 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 32. 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 33. 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 paid 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 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 34. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS 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 DEFENDANTS is intended to purposefully avoid the
27 payment of the correct overtime and double time compensation, meal and rest period premiums,
28 and sick pay as required by California law which allowed DEFENDANTS to illegally profit and

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

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

5 35. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
6 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
7 meaning the time during which an employee is subject to the control of an employer, including all
8 the time the employee is suffered or permitted to work. From time to time, DEFENDANTS required
9 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
10 they were under DEFENDANTS' control. More specifically, from time to time, PLAINTIFF and
11 other CALIFORNIA CLASS Members were required by DEFENDANTS to perform work before
12 and after the beginning of their shifts in order to meet DEFENDANTS' prescribed labor hours to
13 perform all the tasks required of them by DEFENDANTS. Additionally, since DEFENDANTS
14 required PLAINTIFF and other CALIFORNIA CLASS Members to perform as much work as
15 possible and as quickly as possible in order to meet DEFENDANTS' strict performance and
16 production requirements, PLAINTIFF and other CALIFORNIA CLASS Members were, from time
17 to time, required to work off-the-clock before and after their shifts in order to meet DEFENDANTS'
18 strict requirements.

19 36. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
20 minimum wage and overtime compensation by regularly working without their time being
21 accurately recorded and without compensation at the applicable minimum wage and overtime rates.
22 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS
23 necessary wages for attending for performing work at DEFENDANTS' direction, request and
24 benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF
25 and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS'
26 business records.

27 37. DEFENDANTS directed and directly benefited from the uncompensated off-the-
28 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

1 38. DEFENDANTS controlled the work schedules, duties, protocols, applications,
2 assignments, and employment conditions of PLAINTIFF and the other members of the
3 CALIFORNIA CLASS.

4 39. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
5 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
6 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
7 wages earned and owed for all the work they performed, including pre-shift, post shift and during
8 meal period off-the-clock work.

9 40. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
10 exempt employees, subject to the requirements of the California Labor Code.

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

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

18 43. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
19 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
20 for the time spent working while off-the-clock. DEFENDANTS' uniform policy and practice to
21 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked
22 in accordance with applicable law is evidenced by DEFENDANTS' business records.

23 **F. CLASS ACTION ALLEGATIONS**

24 44. PLAINTIFF brings the Fourth through Ninth Causes of Action as a class action
25 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
26 previously were employed by DEFENDANTS in California and classified as non-exempt
27 employees ("CALIFORNIA CLASS") during the period beginning four years prior to the filing
28 of the Complaint and ending on a date determined by the Court ("CLASS PERIOD"). The amount

1 in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five
2 million dollars (\$5,000,000.00).

3 45. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
4 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
5 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
6 and illegal meal and rest period policies. Defendant further failed to compensate for off-the-clock
7 work and failed to maintain required records, and interest, statutory and civil penalties, attorney's
8 fees, costs, and expenses.

9 46. The members of the class are so numerous that joinder of all class members is
10 impractical.

11 47. Common questions of law and fact regarding DEFENDANTS' conduct, including
12 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failing to
13 provide legally compliant meal and rest periods, and failure to ensure they are paid at least
14 minimum wage and overtime, exist as to all members of the class and predominate over any
15 questions affecting solely any individual members of the class. Among the questions of law and
16 fact common to the class are:

- 17 i. Whether DEFENDANTS maintained legally compliant meal period policies and
18 practices;
- 19 ii. Whether DEFENDANTS maintained legally compliant rest period policies and
20 practices;
- 21 iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
22 CLASS Members accurate premium payments for missed meal and rest periods;
- 23 iv. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
24 CLASS Members accurate overtime wages;
- 25 v. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
26 CLASS Members at least minimum wage for all hours worked;

1 vi. Whether DEFENDANTS committed an act of unfair competition by
2 systematically failing to record and pay PLAINTIFF and the other members of the
3 CALIFORNIA CLASS for all time worked;

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

9 viii. Whether DEFENDANTS committed an act of unfair competition in violation of
10 the UCL, by failing to provide the PLAINTIFF and the other members of the
11 CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

16 50. PLAINTIFF will fairly and adequately represent and protect the interests of the
17 CALIFORNIA CLASS Members.

18 51. PLAINTIFF retained able class counsel with extensive experience in class action
19 litigation.

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

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

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

1 the right to be free from unwanted, offensive harassment, and the right to protest such conduct
2 without fear of retaliation or further harm. This public policy of the state is one that benefits the
3 public at large and guarantees the rights of an employee to perform their work free from disability
4 harassment/discrimination/retaliation.

5 67. The motivating reason(s) for PLAINTIFF's termination was disability
6 harassment/discrimination and PLAINTIFF's protests and/or resistance thereof. PLAINTIFF's
7 discharge from his position of employment was in violation of the public policies of the State of
8 California.

9 68. As a result of DEFENDANTS' actions, PLAINTIFF has suffered substantial
10 losses in earnings and employment benefits and emotional distress in an amount to be determined
11 according to proof at trial.

12 69. In doing the acts herein alleged, DEFENDANTS acted with malice and
13 oppression, and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is entitled
14 to exemplary and punitive damages from DEFENDANT in an amount to be determined to punish
15 DEFENDANT and to deter such wrongful conduct in the future.

16 70. PLAINTIFF was harmed by DEFENDANT'S wrongful and illegal termination of
17 his employment.

18 71. The wrongful termination of the employment of PLAINTIFF was and is a
19 substantial factor causing harm to PLAINTIFF.

20 72. On June 16, 2021, PLAINTIFF filed a complaint with the Department of Fair
21 Employment & Housing ("DFEH"), and received an immediate Right to Sue the same day. (See
22 Exhibit #1.)

23 **THIRD CAUSE OF ACTION**

24 **VIOLATION OF GOVERNMENT CODE §12940 et seq. – DISABILITY**

25 **DISCRIMINATION**

26 **(Alleged By PLAINTIFF and against all Defendants)**

27 73. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
28 herein, the prior paragraphs of this Complaint.

1 74. PLAINTIFF was employed by DEFENDANT.

2 75. DEFENDANT is employer covered by Government Code §12940 et seq.

3 76. PLAINTIFF was terminated from his employment and/or suffered other adverse
4 employment actions.

5 77. PLAINTIFF's disability was a substantial motivating reason(s) for his termination
6 and other adverse employment actions.

7 78. As a result of DEFENDANT's conduct, PLAINTIFF has suffered substantial
8 losses in earnings and employment benefits and emotional distress in an amount to be determined
9 according to proof at trial.

10 79. In doing the acts herein alleged, DEFENDANT acted with malice and oppression,
11 and with a conscious disregard of PLAINTIFF'S rights, and PLAINTIFF is entitled to exemplary
12 and punitive damages from DEFENDANT in an amount to be punish DEFENDANTS and to
13 deter such wrongful conduct in the future.

14 **FOURTH CAUSE OF ACTION**

15 **Unlawful Business Practices**

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

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

18 80. 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 81. DEFENDANT is a "person" as that term is defined under Cal. Bus. And Prof.
22 Code § 17021.

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

27 Any person who engages, has engaged, or proposes to engage in unfair competition may
28 be enjoined in any court of competent jurisdiction. The court may make such orders or
judgments, including the appointment of a receiver, as may be necessary to prevent the
use or employment by any person of any practice which constitutes unfair competition, as

1 defined in this chapter, or as may be necessary to restore to any person in interest any
2 money or property, real or personal, which may have been acquired by means of such
unfair competition. (Cal. Bus. & Prof. Code § 17203).

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

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

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

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

26 87. By the conduct alleged herein, DEFENDANT's practices were also unfair and
27 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
28 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members

1 as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

26 93. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
27 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
28

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
2 engaging in any unlawful and unfair business practices in the future.

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

10 **FIFTH CAUSE OF ACTION**

11 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

26 99. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
27 including minimum wage compensation and interest thereon, together with the costs of suit.
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1 100. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
2 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
3 worked. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and
4 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
5 CALIFORNIA CLASS.

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

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

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

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

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

27 106. DEFENDANT knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS are under-compensated for their time worked.

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

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

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

25 **SIXTH CAUSE OF ACTION**

26 **Failure To Pay Overtime Compensation**

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

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

1 109. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
2 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
3 Complaint.

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

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

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

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

19 114. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
20 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
21 they worked, including overtime work.

22 115. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
23 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
24 implementing a uniform policy and practice that failed to accurately record overtime worked by
25 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
26 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
27 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
28 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

18 119. During the CLASS PERIOD, PLAINTIFF and the other members of the
19 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
20 constituting a failure to pay all earned wages.

21 120. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
22 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
23 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
24 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
25 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as
26 evidenced by DEFENDANT's business records and witnessed by employees.

27 121. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
28 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all

1 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
2 CLASS have suffered and will continue to suffer an economic injury in amounts which are
3 presently unknown to them, and which will be ascertained according to proof at trial.

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

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

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

1 132. 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 **NINTH 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)**

8 133. 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.

11 134. 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
15 time, task, piece, Commission basis, or other method of calculation.
16 (e) "Labor" includes labor, work, or service whether rendered or performed
17 under contract, subcontract, partnership, station plan, or other agreement
18 if the to be paid for is performed personally by the person demanding
19 payment.

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

19 136. Cal. Lab. Code § 202 provides, in relevant part, that:

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

25 137. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
26 Members' employment contract.

27 138. Cal. Lab. Code § 203 provides:

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

1 quits, the wages of the employee shall continue as a penalty from the due date thereof at
2 the same rate until paid or until an action therefor is commenced; but the wages shall not
continue for more than 30 days.

3 139. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
4 terminated, and DEFENDANT has not tendered payment of wages to these employees who were
5 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
6 required by law.

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

12 **PRAYER FOR RELIEF**

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

15 1. On behalf of the CALIFORNIA CLASS:

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

26 2. On behalf of the CALIFORNIA CLASS:

- 27 a. That the Court certify the Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action
28 asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of

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Civ. Proc. § 382;

- b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wage 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 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 Plaintiff’s First through Third Causes of Action

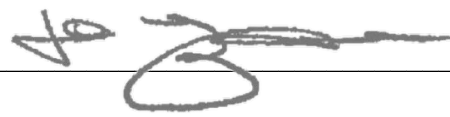
- a. For all special damages which were sustained as a result of DEFENDANTS’ conduct, including but not limited to, back pay, front pay, lost compensation and job benefits that PLAINTIFF would have received but for the practices of DEFENDANTS;
- b. For all exemplary damages, according to proof, which were sustained as a result of DEFENDANTS’ conduct;
- c. An award of interest, including prejudgment interest at the legal rate;
- d. Such other and further relief as the Court deems just and equitable; and
- e. An award of penalties, attorneys’ fees and costs of suit, as allowable under the law.

4. 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: May 27, 2022

JCL LAW FIRM APC

By: 

Jean-Claude Lapuyade
Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

DATED: May 27, 2022

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade
Attorney for PLAINTIFF

EXHIBIT 1

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

June 16, 2021

Via [First Class Mail][Email]
rigomonroy075@gmail.com

Rigoberto Monroy
653 Clara St.
Oakland, California 94603

RE: Notice of Case Closure and Right to Sue
Case Number: 202005-10101806
Case Name: Monroy / DONSUEMOR, INC. et al.
EEOC Number: 37A-2020-04144-C
County of Violation: Alameda

Dear Rigoberto Monroy:

The Department of Fair Employment and Housing (DFEH) has closed your case for the following reason: Insufficient Evidence. The DFEH makes no determination about whether further investigation would establish violations of the Fair Employment and Housing Act (FEHA) or other laws. This decision does not mean the alleged claims have no merit or that the respondent is in compliance with the law. No finding is made as to any other issues that might be construed as having been raised by this complaint.

This is your Right to Sue notice. As specified in Government Code section 12965, subdivision (b), you may file your own civil action asserting employment claims under the FEHA within one year of the date of this letter. If you want to file a civil action that includes other claims, you should consult an attorney about the applicable statutes of limitation.

Your complaint is **dual filed** with the United States Equal Employment Opportunity Commission (EEOC). You have a right to request EEOC to perform a substantial weight review of our findings. This request must be made within fifteen (15) days of your receipt of this notice. Pursuant to Government code section 12965, subdivision (d) (1), your right to sue may be tolled during the pendency of EEOC's review of your complaint. To secure this review, you must request it in writing to the State and Local Coordinator:

EEOC Southern California
Roybal Federal Building
255 East Temple Street, 4th Floor
Los Angeles, California 90012
(213) 894-1100

You have the right to appeal the decision to close your case. This request must be made within ten (10) days of receiving this letter. Your appeal must include: 1) a summary as to why you disagree with the case closure; and/or 2) any new detailed information (e.g., documents, records, witness information) that supports your claim. If you appeal, the information you provide will be carefully considered. You may appeal this decision by:

- Email. Send your request to appeals@dfeh.ca.gov and make reference to the case #: 202005-10101806.

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- Mail. Send your request to: DFEH Appeals Unit, 2218 Kausen Drive, Suite 100, Elk Grove, CA 95758. Include a copy of this letter and make reference to the case #: 202005-10101806.
- Phone. Call us at 800-884-1684 (voice), 800-700-2320 (TTY), or by using California's Relay Service at 711.

Although the DFEH has closed this case, the allegations and conduct at issue may be in violation of the law. You should consult an attorney as soon as possible regarding any other options and/or recourse you may have regarding the underlying acts or conduct.

Below are some resources to assist you in deciding whether to bring a civil action on your own behalf in court in the State of California under the provisions of the FEHA against the person, employer, labor organization or employment agency named in your complaint. To proceed in Superior Court, you should contact an attorney.

- The State Bar of California has a Lawyer Referral Services Program which can be accessed through its website at www.calbar.ca.gov under the "Public" link, or by calling 866-442-2529 (within California) or 415-538-2250 (outside California).
- Your local city or county may also have a lawyer referral or legal aid service.
- The Department of Consumer Affairs (DCA) has a publication titled "The Small Claims Court: A Guide to Its Practical Use" online at www.dca.ca.gov/publications/small_claims. You may also order a free copy by calling the DCA Publication Hotline at 866-320-8652, or by writing to them at: DCA, Office of Publications, Design and Editing, 1625 North Market Blvd., Suite N-112, Sacramento, CA 95834.

Sincerely,

Susie Aceron

Susie Aceron
Associate Governmental Program Analyst
559-244-4796
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Cc:

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