

**SUMMONS
(CITACION JUDICIAL)**

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

DOUGLAS PRODUCTS AND PACKAGING COMPANY LLC, a Missouri limited liability company; and DOES 1 through 50, Inclusive,

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

DINO DESANCTIS, an individual, on behalf of himself, and on behalf of all persons similarly situated

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

FILED
SEP - 8 2021

K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By _____
T. Schrader, Deputy Clerk

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):

Contra Costa Superior Court, Wakefield Taylor Courthouse
725 Court Street
Martinez, CA 94553

CASE NUMBER
(Número del Caso)
21-01874

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):

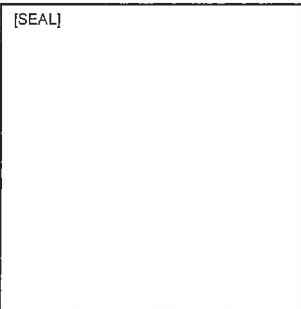
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 3990 Old Town Avenue, C204, San Diego, CA 92110

DATE:
(Fecha)

SEP - 8 2021

Clerk, by _____, Deputy
(Secretario) T. Schrader (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

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

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

VIA FAX

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16 Attorneys for Plaintiff DINO DESANCTIS

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **IN AND FOR COUNTY OF CONTRA COSTA**

19 DINO DESANCTIS, an individual, on behalf of
20 himself, and on behalf of all persons similarly
21 situated,

22 Plaintiffs,

23 vs.

24 DOUGLAS PRODUCTS AND PACKAGING
25 COMPANY LLC, a Missouri limited liability
26 company; and DOES 1 through 50, Inclusive;

27 Defendants.

Case No. C21-01874

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN

FILED
SEP - 8 2021

K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By _____
T. Schrader, Deputy Clerk

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT. 301, FOR ALL
PURPOSES

SUMMONS ISSUED

VIA FAX

VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203;
VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR JURY TRIAL

Plaintiff DINO DESANCTIS (“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 DOUGLAS PRODUCTS AND PACKAGING COMPANY LLC, (“DEFENDANT”) is a Missouri limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of Contra Costa, manufactures and markets specialty products in agriculture and structural pest control.

2. 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 allege, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANTS”), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

3. The agents, servants and/or employees of the DEFENDANTS and each of them acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the DEFENDANT, and personally participated in the conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the



1 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are
2 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
3 proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

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

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

14 6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on an
15 hourly basis and entitled to certain non-discretionary incentive awards, bonuses, overtime pay and
16 legally compliant meal and rest periods from 2019 to March of 2021.

17 7. PLAINTIFF brings this Class Action on behalf of himself and on behalf of all of
18 DEFENDANTS current and former non-exempt California employees (the "CALIFORNIA CLASS")
19 at any time during the period beginning four years from the date of the filing of this Complaint and
20 ending on a date determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
21 aggregate claim of CALIFORNIA CLASS members is under five million dollars (\$5,000,000.00).

22 8. PLAINTIFF brings this Class Action on behalf of himself and on behalf of the
23 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
24 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which
25 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest
26 periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of
27 California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission
28 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in



1 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to
2 provide accurate itemized wage statements in violation of California Labor Code Sections 226 and
3 226.3.

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

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

11 **JURISDICTION AND VENUE**

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

16 12. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
17 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,
18 and DEFENDANTS (i) currently maintains and at all relevant times, maintained offices and facilities
19 in this County and/or conducts substantial business in this County, and (ii) committed the wrongful
20 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

21 **THE CONDUCT**

22 13. In violation of the applicable sections of the California Labor Code and the requirements
23 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
24 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
25 compliant meal and rest period, failed to accurately compensate PLAINTIFF and the other members of
26 the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other
27 members of the CALIFORNIA CLASS for all time worked, and failed to issue to PLAINTIFF and the
28 members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other



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

7 **A. Overtime Regular Rate Violation**

8 14. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continues to
9 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for
10 their overtime hours worked. As a result, PLAINTIFF and the other CALIFORNIA CLASS members
11 forfeited wages due them for working overtime without compensation at the correct overtime rates.
12 DEFENDANTS' uniform policy and practice to not pay the CALIFORNIA CLASS members the
13 correct overtime rate for all overtime worked in accordance with applicable law is evidenced by
14 DEFENDANTS' business records.

15 15. State law provides that employees must be paid overtime at one-and-one-half times their
16 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at
17 an hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

18 16. The second component of PLAINTIFF'S and other CALIFORNIA CLASS members'
19 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and
20 other CLASS MEMBERS incentive wages based on their performance for DEFENDANTS. The non-
21 discretionary bonus program provided all employees paid on an hourly basis with bonus and/or
22 commission compensation when the employees met the various performance goals set by
23 DEFENDANTS. These incentive payments are identified as "Bonus" in the wage statements issued
24 by DEFENDANTS to PLAINTIFF and the other CALIFORNIA CLASS members.

25 17. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
26 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime and earned this non-
27 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
28 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather

1 than just all non-overtime hours worked. Management and supervisors described the incentive/bonus
2 program to potential and new employees as part of the compensation package. As a matter of law, the
3 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS members must be
4 included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment
5 of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS members by
6 DEFENDANTS.

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

16 **B. Unlawful Rounding Violations**

17 19. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
18 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
19 meaning the time during which an employee is subject to the control of an employer, including all the
20 time the employee is suffered or permitted to work. From time to time, DEFENDANTS required
21 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they
22 were under DEFENDANTS' control. Specifically, PLAINTIFF performed work before and after the
23 beginning of his shift, spending time under the DEFENDANTS' control for which he was not
24 compensated. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
25 minimum wage and overtime compensation by regularly working without their time being accurately
26 recorded and without compensation at the applicable minimum wage and overtime rates.
27 DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS
28 Members for all time worked is evidenced by DEFENDANTS' business records.

1 20. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in place an
2 immutable timekeeping system to accurately record and pay PLAINTIFF and other CALIFORNIA
3 CLASS Members for the actual time these employees worked each day, including overtime hours.
4 Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted in
5 PLAINTIFF and CALIFORNIA CLASS Members being undercompensated for all of their time
6 worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally round the
7 time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and the members of the
8 CALIFORNIA CLASS in order to avoid paying these employees for all their time worked, including
9 the applicable overtime compensation for overtime worked. As a result, PLAINTIFF and other
10 CALIFORNIA CLASS Members, from time to time, forfeited compensation for their time worked by
11 working without their time being accurately recorded and without compensation at the applicable
12 overtime rates.

13 21. Further, the mutability of DEFENDANTS' timekeeping system and unlawful rounding
14 policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time being
15 inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding policy and
16 practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by
17 DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break.
18 Additionally, DEFENDANTS' unlawful rounding policy and practice caused PLAINTIFF and
19 CALIFORNIA CLASS Members to perform work as ordered by DEFENDANTS for more than ten
20 (10) hours during a shift without receiving a second off-duty meal break. Moreover, from time to time,
21 DEFENDANTS' unlawful rounding policy also resulted in an auto-deduction of exact half-hour meal
22 breaks from PLAINTIFF's and CALIFORNIA CLASS Members' meal breaks.

23 **C. Meal Period Violations**

24 22. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
25 required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked, meaning
26 the time during which an employee is subject to the control of an employer, including all the time the
27 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD,
28 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS members to work without paying

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1 them for all the time they were under DEFENDANTS' control. Specifically, as a result of
2 PLAINTIFF's demanding work requirements, DEFENDANTS required PLAINTIFF to work while
3 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from
4 time to time interrupted by work assignments while clocked out for what should have been
5 PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not even
6 receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS members
7 forfeited minimum wage and overtime wages by regularly working without their time being accurately
8 recorded and without compensation at the applicable minimum wage and overtime rates.
9 DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS
10 members for all time worked is evidenced by DEFENDANTS' business records.

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

25 **D. Rest Period Violations**

26 24. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
27 CLASS members were also required from time to time to work in excess of four (4) hours without
28 being provided ten (10) minute rest periods as a result of their rigorous work schedule and

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

11 **E. Wage Statement Violations**

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

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



1 27. In addition to the violations described above, DEFENDANTS, from time to time, failed
2 to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply
3 with Cal. Lab. Code § 226, and specifically DEFENDANTS failed to include the correct total number
4 of hours worked on the wage statements. Specifically, DEFENDANTS from time to time issued
5 itemized wage statements to PLAINTIFF and the CALIFORNIA CLASS Members that failed to
6 provide the accurate name of the employing entity in violation of Cal. Lab. Code § 226(a)(7). As a
7 result, DEFENDANTS issued PLAINTIFF and the other members of the CALIFORNIA CLASS with
8 wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS' violations are knowing
9 and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent
10 mistake.

11 **F. Warehouse Conditions**

12 28. DEFENDANTS violated section 15 of Industrial Welfare Commission Wage Order No.
13 13-2001. Specifically, per Section 15, DEFENDANTS failed to insure that "the temperature maintained
14 in each work area shall provide reasonable comfort consistent with industry-wide standards for the
15 nature of the process and the work performed" for PLAINTIFF and the other members of the
16 CALIFORNIA CLASS. Further, per Section 15, DEFENDANT failed to prevent "excessive heat or
17 humidity" [] created by the work process," and failed to "take all feasible means to reduce such
18 excessive heat or humidity to a degree providing reasonable comfort."

19 **G. Suitable Seating Violations**

20 29. PLAINTIFF further alleges that DEFENDANTS' warehouses provide ample space to
21 allow for the presence and use of a stool or seat by DEFENDANTS' employees' during the
22 performance of some of their work duties. DEFENDANTS' employees' working at DEFENDANTS'
23 warehouses spend a very substantial portion, and, in many workdays, the vast majority of their time
24 wrapping valves. The nature of the position can reasonably be accomplished while using a seat/stool.

25 30. In violation of the applicable sections of the California Labor Code and the requirements
26 of the applicable Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of
27 company policy, practice and procedure, intentionally, knowingly and systematically failed to provide
28



1 PLAINTIFF and the other Aggrieved Employees suitable seating when the nature of these employees'
2 work reasonably permitted sitting.

3 31. DEFENDANTS knew or should have known that PLAINTIFF and other Aggrieved
4 Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the
5 performance of their duties, and that DEFENDANTS did not provide suitable seating and/or did not
6 allow them to sit when it did not interfere with the performance of their duties. By reason of this conduct
7 applicable to PLAINTIFF and all Aggrieved Employees, DEFENDANTS violated California Labor
8 Code Section 1198 and Wage Order 4-2001, Section 14 by failing to provide suitable seats.

9 **CLASS ACTION ALLEGATIONS**

10 32. PLAINTIFF brings the First through Eighth Causes of Action as a class action pursuant
11 to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current and former non-
12 exempt California employees ("CALIFORNIA CLASS") during the period beginning four years prior
13 to the filing of the Complaint and ending on a date determined by the Court ("CLASS PERIOD").

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

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

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



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

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

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

1 interests as the other members of the class.

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

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

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

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

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

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

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

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

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



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

3 FIRST CAUSE OF ACTION

4 For Unlawful Business Practices

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

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

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

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

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

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

22 Cal. Bus. & Prof. Code § 17203.

23 48. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
24 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
25 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
26 “UCL”), by engaging and continuing to engage in business practices which violates California law,
27 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
28 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194,



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **SECOND CAUSE OF ACTION**

8 **For Failure to Pay Overtime Compensation**

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

7 **THIRD CAUSE OF ACTION**

8 **For Failure to Pay Minimum Wages**

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

19 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

19 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

15 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

- 23 1. Gross wages earned;
- 24 2. Total hours worked by the employee, except for any employee
25 whose compensation is solely based on a salary and who is exempt from
26 payment of overtime under subdivision (a) of Section 515 or any applicable
27 order of the Industrial Welfare Commission;
- 28 3. The number of piece-rate units earned and any applicable piece rate

1 if the employee is paid on a piece-rate basis;

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

4 5. Net wages earned;

5 6. The inclusive dates of the period for which the employee is paid,

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

10 8. The name and address of the legal entity that is the employer, and

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

13 101. During the LABOR CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF
14 and the other members of the CALIFORNIA CLASS with complete and accurate wage statements
15 which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages
16 earned, (3) gross wages earned and (7) all applicable hourly rates in effect during the pay period and
17 the corresponding number of hours worked at each hourly rate by the employee in violation of
18 California Labor Code Section 226. Specifically, DEFENDANTS issued itemized wage statements to
19 PLAINTIFF and the other members of the CALIFORNIA CLASS that failed to provide the accurate
20 name of the employing entity in violation of Cal. Lab. Code § 226(a)(7).

21 102. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §
22 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA
23 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for
24 the overtime worked and the amount of employment taxes which were not properly paid to state and
25 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other
26 members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)
27 for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
28 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and

1 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time
2 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
3 member of the CALIFORNIA CLASS herein.

4 **SEVENTH CAUSE OF ACTION**

5 **FAILURE TO PAY WAGES WHEN DUE**

6 **(Cal Lab. Code §§201, 202, 203)**

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

8 103. 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 Complaint.

10 104. Cal. Lab. Code § 200 provides that:

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

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

21 106. Cal. Lab. Code § 202 provides, in relevant part, that:

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

1 entitled to receive payment by mail if he or she so requests and
2 designates a mailing address. The date of the mailing shall constitute
3 the date of payment for purposes of the requirement to provide
4 payment within 72 hours of the notice of quitting.

5 107. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members'
6 employment contract.

7 108. Cal. Lab. Code § 203 provides:

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

14 109. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated
15 and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest
16 breaks, as required by law.

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

22 **EIGHTH CAUSE OF ACTION**

23 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

24 **(Cal. Lab. Code §§2698 et seq.)**

25 **(Alleged by PLAINTIFF against all Defendants)**

26 111. PLAINTIFF reallege and incorporates by this reference, as though fully set forth herein,
27 the prior paragraphs of this Complaint.

28

1 112. PAGA is a mechanism by which the State of California itself can enforce state labor laws
2 through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law
3 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
4 enforcement action designed to protect the public and not to benefit private parties. The purpose of
5 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
6 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
7 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
8 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly,
9 PAGA claims cannot be subject to arbitration.

10 113. PLAINTIFF, and such persons that may be added from time to time who satisfy the
11 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
12 this Representative Action on behalf of the State of California with respect to themselves and all
13 individuals who are or previously were employed by Defendant in California during the time period of
14 April 19, 2020 until the present (the "AGGRIEVED EMPLOYEES").

15 114. On April 19, 2021, PLAINTIFF gave written notice by certified mail to the Labor and
16 Workforce Development Agency (the "Agency") and the employer of the specific provisions of
17 this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
18 hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these
19 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may now
20 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State
21 of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

22 115. The policies, acts and practices heretofore described were and are an unlawful business
23 act or practice because DEFENDANTS (a) failed to properly record and pay PLAINTIFF and the other
24 AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime hours in violation of
25 the Wage Order, (b) failed to provide accurate itemized wage statements, (c) failed to provide mandatory
26 meal breaks and rest breaks, (d) failed to timely pay wages, and (e) failed to provide suitable seating, all
27 in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not
28 limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246,

1 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804 and the applicable
2 Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct.
3 PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney
4 General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated
5 on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and
8 severally, as follows:

9 1. On behalf of the CALIFORNIA CLASS:

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

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

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

16 D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for
17 restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other
18 members of the CALIFORNIA CLASS.

19 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of
20 Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. §
21 382;

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

26 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
27 which a violation occurs and one hundred dollars (\$100) per each member of the
28 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an





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aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

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

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

2. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004

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 cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

Dated: September 2, 2021

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

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

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

Dated: September 2, 2021

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

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #39101

June 29, 2021

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

<p>Labor & Workforce Development Agency Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, CA 94612 PAGA@dir.ca.gov <i>Via Online Submission</i></p>	<p>DOUGLAS PRODUCTS AND PACKAGING COMPANY LLC c/o C T CORPORATION SYSTEM 330 N. BRAND BLVD, SUITE 700 GLENDALE, CA 91203 <i>Via Certified Mail with Return Receipt No. 7021 0350 0001 8165 2146</i></p> <p>c/o C T CORPORATION SYSTEM 330 N. BRAND BLVD GLENDALE, CA 91203 <i>Via Certified Mail with Return Receipt No. 7021 0950 0001 6369 9330</i></p>
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Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff DINO DESANCTIS (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against DOUGLAS PRODUCTS AND PACKAGING COMPANY LLC, a Missouri limited liability company (“Defendant”). Plaintiff was employed by Defendant in California between 2019 to March 2021 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages. Additionally, Defendant failed to provide Plaintiff and other aggrieved employees with suitable seating.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

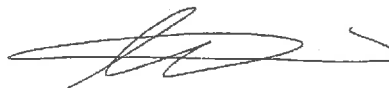
Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant during the relevant claim period.

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

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

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

Sincerely,



Shani O. Zakay
Attorney for Plaintiff

1 JEAN-CLAUDE LAPUYADE (SBN 248676)

2 JLAPUYADE@JCL-LAWFIRM.COM

3 **JCL LAW FIRM, APC**

4 3990 OLD TOWN AVENUE, SUITE C204

5 SAN DIEGO, CA 92110

6 TEL: (619) 599-8292

7 FAX: (619) 599-8291

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9 **ZAKAY LAW GROUP, APLC**

10 3990 OLD TOWN AVENUE, SUITE C204

11 SAN DIEGO, CA 92110

12 TEL: (619) 255-9047

13 FAX: (619) 404-9203

14 ATTORNEYS FOR PLAINTIFF

15 **SUPERIOR COURT OF CALIFORNIA**
16 **COUNTY OF CONTRA COSTA**

17 DINO DESANCTIS, an individual, on behalf
18 of himself, and on behalf of all persons
19 similarly situated,

20 Plaintiffs,

21 vs.

22 DOUGLAS PRODUCTS AND PACKAGING
23 COMPANY LLC, a Missouri limited liability
24 company; and DOES 1 through 50, Inclusive;

25 DEFENDANTS.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203;
8. VIOLATION OF CALIFORNIA LABOR CODE § 1198 AND CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 1 1070(14) (FAILURE TO PROVIDE SEATING)

1 **DEMAND FOR JURY TRIAL**

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6 Plaintiff DINO DESANCTIS (“PLAINTIFF”) an individual, on behalf of himself and all other

7 similarly situated current and former employees alleges on information and belief, except for his own

8 acts and knowledge which are based on personal knowledge, the following:

9 **THE PARTIES**

10 1. Defendant DOUGLAS PRODUCTS AND PACKAGING COMPANY LLC,

11 (“DEFENDANT”) is a Missouri limited liability company that at all relevant times mentioned herein

12 conducted and continues to conduct substantial business in the state of California, county of Contra

13 Costa, manufactures and markets specialty products in agriculture and structural pest control.

14 2. The true names and capacities, whether individual, corporate, subsidiary, partnership,

15 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to

16 PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc.

17 Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and

18 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and

19 believes, and based upon that information and belief allege, that the Defendants named in this

20 Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANTS”), are

21 responsible in some manner for one or more of the events and happenings that proximately caused the

22 injuries and damages hereinafter alleged.

23 3. The agents, servants and/or employees of the DEFENDANTS and each of them acting on

24 behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent,

25 servant and/or employee of the DEFENDANT, and personally participated in the conduct alleged

26 herein on behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the

27 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are

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1 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
2 proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

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

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

13 6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on an
14 hourly basis and entitled to certain non-discretionary incentive awards, bonuses, overtime pay and
15 legally compliant meal and rest periods from 2019 to March of 2021.

16 7. PLAINTIFF brings this Class Action on behalf of himself and on behalf of all of
17 DEFENDANTS current and former non-exempt California employees (the "CALIFORNIA CLASS")
18 at any time during the period beginning four years from the date of the filing of this Complaint and
19 ending on a date determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
20 aggregate claim of CALIFORNIA CLASS members is under five million dollars (\$5,000,000.00).

21 8. PLAINTIFF brings this Class Action on behalf of himself and on behalf of the
22 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
23 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which
24 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest
25 periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of
26 California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission
27 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in
28 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to

1 provide accurate itemized wage statements in violation of California Labor Code Sections 226 and
2 226.3.

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

6 10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
7 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other
8 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS's past
9 and current unlawful conduct, and all other appropriate legal and equitable relief.

10 JURISDICTION AND VENUE

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

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

20 THE CONDUCT

21 13. In violation of the applicable sections of the California Labor Code and the requirements
22 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
23 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
24 compliant meal and rest period, failed to accurately compensate PLAINTIFF and the other members of
25 the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other
26 members of the CALIFORNIA CLASS for all time worked, and failed to issue to PLAINTIFF and the
27 members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other
28 things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time

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

6 **A. Overtime Regular Rate Violation**

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

14 15. State law provides that employees must be paid overtime at one-and-one-half times their
15 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at
16 an hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

17 16. The second component of PLAINTIFF'S and other CALIFORNIA CLASS members'
18 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and
19 other CLASS MEMBERS incentive wages based on their performance for DEFENDANTS. The non-
20 discretionary bonus program provided all employees paid on an hourly basis with bonus and/or
21 commission compensation when the employees met the various performance goals set by
22 DEFENDANTS. These incentive payments are identified as "Bonus" in the wage statements issued
23 by DEFENDANTS to PLAINTIFF and the other CALIFORNIA CLASS members.

24 17. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
25 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime and earned this non-
26 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
27 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather
28 than just all non-overtime hours worked. Management and supervisors described the incentive/bonus

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1 program to potential and new employees as part of the compensation package. As a matter of law, the
2 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS members must be
3 included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment
4 of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS members by
5 DEFENDANTS.

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

15 **B. Unlawful Rounding Violations**

16 19. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
17 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
18 meaning the time during which an employee is subject to the control of an employer, including all the
19 time the employee is suffered or permitted to work. From time to time, DEFENDANTS required
20 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they
21 were under DEFENDANTS' control. Specifically, PLAINTIFF performed work before and after the
22 beginning of his shift, spending time under the DEFENDANTS' control for which he was not
23 compensated. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
24 minimum wage and overtime compensation by regularly working without their time being accurately
25 recorded and without compensation at the applicable minimum wage and overtime rates.
26 DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS
27 Members for all time worked is evidenced by DEFENDANTS' business records.

1 20. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in place an
2 immutable timekeeping system to accurately record and pay PLAINTIFF and other CALIFORNIA
3 CLASS Members for the actual time these employees worked each day, including overtime hours.
4 Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted in
5 PLAINTIFF and CALIFORNIA CLASS Members being undercompensated for all of their time
6 worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally round the
7 time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and the members of the
8 CALIFORNIA CLASS in order to avoid paying these employees for all their time worked, including
9 the applicable overtime compensation for overtime worked. As a result, PLAINTIFF and other
10 CALIFORNIA CLASS Members, from time to time, forfeited compensation for their time worked by
11 working without their time being accurately recorded and without compensation at the applicable
12 overtime rates.

13 21. Further, the mutability of DEFENDANTS' timekeeping system and unlawful rounding
14 policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time being
15 inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding policy and
16 practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by
17 DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break.
18 Additionally, DEFENDANTS' unlawful rounding policy and practice caused PLAINTIFF and
19 CALIFORNIA CLASS Members to perform work as ordered by DEFENDANTS for more than ten
20 (10) hours during a shift without receiving a second off-duty meal break. Moreover, from time to time,
21 DEFENDANTS' unlawful rounding policy also resulted in an auto-deduction of exact half-hour meal
22 breaks from PLAINTIFF's and CALIFORNIA CLASS Members' meal breaks.

23 **C. Meal Period Violations**

24 22. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
25 required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked, meaning
26 the time during which an employee is subject to the control of an employer, including all the time the
27 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD,
28 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS members to work without paying



1 them for all the time they were under DEFENDANTS' control. Specifically, as a result of
2 PLAINTIFF's demanding work requirements, DEFENDANTS required PLAINTIFF to work while
3 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from
4 time to time interrupted by work assignments while clocked out for what should have been
5 PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not even
6 receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS members
7 forfeited minimum wage and overtime wages by regularly working without their time being accurately
8 recorded and without compensation at the applicable minimum wage and overtime rates.
9 DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS
10 members for all time worked is evidenced by DEFENDANTS' business records.

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

25 **D. Rest Period Violations**

26 24. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
27 CLASS members were also required from time to time to work in excess of four (4) hours without
28 being provided ten (10) minute rest periods as a result of their rigorous work schedule and

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

11 **E. Wage Statement Violations**

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

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

28

1 27. In addition to the violations described above, DEFENDANTS, from time to time, failed
2 to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply
3 with Cal. Lab. Code § 226, and specifically DEFENDANTS failed to include the correct total number
4 of hours worked on the wage statements. Specifically, DEFENDANTS from time to time issued
5 itemized wage statements to PLAINTIFF and the CALIFORNIA CLASS Members that failed to
6 provide the accurate name of the employing entity in violation of Cal. Lab. Code § 226(a)(7). As a
7 result, DEFENDANTS issued PLAINTIFF and the other members of the CALIFORNIA CLASS with
8 wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS' violations are knowing
9 and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent
10 mistake.

11 **F. Warehouse Conditions**

12 28. DEFENDANTS violated section 15 of Industrial Welfare Commission Wage Order No.
13 13-2001. Specifically, per Section 15, DEFENDANTS failed to insure that "the temperature maintained
14 in each work area shall provide reasonable comfort consistent with industry-wide standards for the
15 nature of the process and the work performed" for PLAINTIFF and the other members of the
16 CALIFORNIA CLASS. Further, per Section 15, DEFENDANT failed to prevent "excessive heat or
17 humidity" [] created by the work process," and failed to "take all feasible means to reduce such
18 excessive heat or humidity to a degree providing reasonable comfort."

19 **G. Suitable Seating Violations**

20 29. PLAINTIFF further alleges that DEFENDANTS' warehouses provide ample space to
21 allow for the presence and use of a stool or seat by DEFENDANTS' employees' during the
22 performance of some of their work duties. DEFENDANTS' employees' working at DEFENDANTS'
23 warehouses spend a very substantial portion, and, in many workdays, the vast majority of their time
24 wrapping valves. The nature of the position can reasonably be accomplished while using a seat/stool.

25 30. In violation of the applicable sections of the California Labor Code and the requirements
26 of the applicable Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of
27 company policy, practice and procedure, intentionally, knowingly and systematically failed to provide
28



1 PLAINTIFF and the other Aggrieved Employees suitable seating when the nature of these employees'
2 work reasonably permitted sitting.

3 31. DEFENDANTS knew or should have known that PLAINTIFF and other Aggrieved
4 Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the
5 performance of their duties, and that DEFENDANTS did not provide suitable seating and/or did not
6 allow them to sit when it did not interfere with the performance of their duties. By reason of this conduct
7 applicable to PLAINTIFF and all Aggrieved Employees, DEFENDANTS violated California Labor
8 Code Section 1198 and Wage Order 4-2001, Section 14 by failing to provide suitable seats.

9 **CLASS ACTION ALLEGATIONS**

10 32. PLAINTIFF brings the First through Eighth Causes of Action as a class action pursuant
11 to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current and former non-
12 exempt California employees ("CALIFORNIA CLASS") during the period beginning four years prior
13 to the filing of the Complaint and ending on a date determined by the Court ("CLASS PERIOD").

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

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

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



1 a. Whether DEFENDANTS maintained legally compliant meal period
2 policies and practices;

3 b. Whether DEFENDANTS maintained legally compliant rest period
4 policies and practices;

5 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
6 CALIFORNIA CLASS members accurate premium payments for missed
7 meal and rest periods;

8 d. Whether DEFENDANTS failed to pay PLAINTIFF and the
9 CALIFORNIA CLASS members accurate overtime wages;

10 e. Whether DEFENDANTS failed to pay PLAINTIFF and the
11 CALIFORNIA CLASS members at least minimum wage for all hours
12 worked;

13 f. Whether DEFENDANTS issued legally compliant wage statements;

14 g. Whether DEFENDANTS committed an act of unfair competition by
15 systematically failing to record and pay PLAINTIFF and the other members
16 of the CALIFORNIA CLASS for all time worked;

17 h. Whether DEFENDANTS committed an act of unfair competition by
18 systematically failing to record all meal and rest breaks missed by
19 PLAINTIFF and other CALIFORNIA CLASS members, even though
20 DEFENDANTS enjoyed the benefit of this work, required employees to
21 perform this work and permits or suffers to permit this work;

22 i. Whether DEFENDANTS committed an act of unfair competition in
23 violation of the UCL, by failing to provide the PLAINTIFF and the other
24 members of the CALIFORNIA CLASS with the legally required meal and
25 rest periods; and,

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

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

1 interests as the other members of the class.

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

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

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

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

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

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

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

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

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

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

3 **FIRST CAUSE OF ACTION**

4 **For Unlawful Business Practices**

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

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

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

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

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

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

22 Cal. Bus. & Prof. Code § 17203.

23 48. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
24 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
25 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
26 “UCL”), by engaging and continuing to engage in business practices which violates California law,
27 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
28 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194,

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

7 **SECOND CAUSE OF ACTION**

8 **For Failure to Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

7 **THIRD CAUSE OF ACTION**

8 **For Failure to Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **FOURTH CAUSE OF ACTION**

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

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

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

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

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



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

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

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

19 **FIFTH CAUSE OF ACTION**

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

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

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

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

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



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

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

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

15 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

- 23 1. Gross wages earned;
- 24 2. Total hours worked by the employee, except for any employee
25 whose compensation is solely based on a salary and who is exempt from
26 payment of overtime under subdivision (a) of Section 515 or any applicable
27 order of the Industrial Welfare Commission;
- 28 3. The number of piece-rate units earned and any applicable piece rate



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if the employee is paid on a piece-rate basis;

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

5. Net wages earned;

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

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

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

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

101. During the LABOR CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3) gross wages earned and (7) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of California Labor Code Section 226. Specifically, DEFENDANTS issued itemized wage statements to PLAINTIFF and the other members of the CALIFORNIA CLASS that failed to provide the accurate name of the employing entity in violation of Cal. Lab. Code § 226(a)(7).

102. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and

1 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time
2 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
3 member of the CALIFORNIA CLASS herein.

4 **SEVENTH CAUSE OF ACTION**

5 **FAILURE TO PAY WAGES WHEN DUE**

6 **(Cal Lab. Code §§201, 202, 203)**

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

8 103. 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 Complaint.

10 104. Cal. Lab. Code § 200 provides that:

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

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

21 106. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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1 entitled to receive payment by mail if he or she so requests and
2 designates a mailing address. The date of the mailing shall constitute
3 the date of payment for purposes of the requirement to provide
4 payment within 72 hours of the notice of quitting.

5 107. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members'
6 employment contract.

7 108. Cal. Lab. Code § 203 provides:

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

14 109. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated
15 and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest
16 breaks, as required by law.

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

22 **EIGHTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE SUITABLE SEATING**

24 **(Cal. Lab. Code §§1198 *et seq.* & California Code of Regulations, Title 8, Section 11070(14))**

25 **(Alleged by PLAINTIFF against all Defendants)**

26 111. PLAINTIFF, and the other AGGRIEVED EMPLOYEES, reallege and incorporate by
27 this reference, as though fully set forth herein, all paragraphs of this Complaint.

1 112. California Labor Code section 1198 makes it illegal to employ an employee under
2 conditions of labor that are prohibited by the applicable wage order.

3 113. California Labor Code section 1198 requires that “. . . the standard conditions of labor
4 fixed by the commission shall be the . . . standard conditions of labor for employees. The employment
5 of any employee . . . under conditions of labor prohibited by the order is unlawful. California Code of
6 Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided
7 with suitable seats when the nature of the work reasonably permits the use of seats.”

8 114. California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen
9 employees are not engaged in the active duties of their employment and the nature of the work requires
10 standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area
11 and employees shall be permitted to use such seats when it does not interfere with the performance of
12 their duties.”

13 115. DEFENDANT violated California Labor Code section 1198 and California Code of
14 Regulations, Title 8, section 11070(14) because PLAINTIFF and AGGRIEVED EMPLOYEES were
15 not permitted to sit, even if they were not engaged in active duties. They were not permitted to sit, even
16 when it would not interfere with the performance of their duties, nor were they provided with suitable
17 seats.

18 116. PLAINTIFF and AGGRIEVED EMPLOYEES are entitled to recover all remedies
19 available for violations of California Labor Code section 1198 and California Code of Regulations,
20 Title 8, section 11070(14)

21 117. Pursuant to the civil penalties provided for in California Labor Code sections 2699 (f)
22 and (g), the State of California, PLAINTIFF and other aggrieved employees are entitled to recover civil
23 penalties of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
24 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
25 subsequent violation, plus costs and attorneys' fees for violation of California Labor Code section 1198.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and
28 severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

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

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

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

7 D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for
8 restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other
9 members of the CALIFORNIA CLASS.

10 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of
11 Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. §
12 382;

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

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

22 3. Meal and rest period compensation pursuant to California Labor Code Section
23 226.7, 512 and the applicable IWC Wage Order;

24 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
25 1197.

26 2. On all claims:

27 A) An award of interest, including prejudgment interest at the legal rate;

28 B) Such other and further relief as the Court deems just and equitable; and,

1 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
2 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.
3

4 Dated: _____

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

6 By: 
7 Jean-Claude Lapuyade
8 Attorneys for PLAINTIFF

9
10 **DEMAND FOR JURY TRIAL**

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

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13 Dated: _____

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

15 By: 
16 Jean-Claude Lapuyade
17 Attorneys for PLAINTIFF

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