

**SUMMONS  
(CITACION JUDICIAL)**

FILED  
Superior Court of California, SUM-100  
FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)  
01/05/2022  
mwhltaker  
By \_\_\_\_\_, Deputy  
Case Number:  
34-2022-00313456

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

DRUMMAC, INC., a Florida corporation; MORAN ENVIRONMENTAL RECOVERY, LLC, a Delaware limited liability company; MORAN TOWING CORPORATION, a New York corporation; and DOES 1 through 50, Inclusive.

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

AARON GORMAN, an individual, on behalf of himself, and on behalf of all persons similarly situated,

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

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

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

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

Sacramento Superior Court, Gordon D. Schaber Courthouse  
720 9th Street  
Sacramento, CA 95814

CASE NUMBER:  
(Número del Caso):

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203  
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE:  
(Fecha) JAN 5 2022

Clerk, by M. WHITAKER, Deputy  
(Secretario) (Adjunto)

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

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



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

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
- by personal delivery on (date):

VIA FAX

FILED  
Superior Court Of California,  
Sacramento  
01/04/2022  
mwhitaker  
By \_\_\_\_\_, Deputy  
Case Number:  
34-2022-00313458

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Attorneys for Plaintiff AARON GORMAN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SACRAMENTO**

AARON GORMAN, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiffs,

vs.

DRUMMAC, INC., a Florida corporation;  
MORAN ENVIRONMENTAL RECOVERY, LLC, a Delaware limited liability company;  
MORAN TOWING CORPORATION, a New York corporation; and DOES 1 through 50, Inclusive.

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

1 THE APPLICABLE IWC WAGE  
2 ORDER;

3 6. FAILURE TO PROVIDE ACCURATE  
4 ITEMIZED STATEMENTS IN  
5 VIOLATION OF CAL. LAB. CODE §  
6 226;

7 7. FAILURE TO PAY WAGES WHEN  
8 DUE IN VIOLATION OF CAL. LABOR  
9 CODE §§ 201, 202 AND 203;

10 8. UNPAID SICK PAY IN VIOLATION OF  
11 CAL. LABOR CODE § 246;

12 9. VIOLATION OF THE PRIVATE  
13 ATTORNEYS GENERAL ACT [LABOR  
14 CODE §§ 2698 ET SEQ.]

15 **DEMAND FOR JURY TRIAL**

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

19 **THE PARTIES**

20 1. Defendant DRUMMAC, INC. (“Defendant Drummac”) is a Florida corporation that at all  
21 relevant is in the business of providing transportation maintenance, inspection, and repair services  
22 throughout State of California.

23 2. Defendant MORAN ENVIRONMENTAL RECOVERY, LLC (“Defendant Moran  
24 Environmental”) is a Delaware limited liability company that at all relevant times is in the business of  
25 providing environmental, industrial, mechanical, and commercial diving services throughout the State  
26 of California.

27 3. Defendant MORAN TOWING CORPORATION (“Defendant Moran Towing”) is a New  
28 York corporation that at all relevant times is in the business of providing harbor services, marine  
transportation services, and environmental services throughout the State of California.

1 Defendant Drummac, Defendant Moran Environmental, and Defendant Moran Towing  
were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the  
PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for  
the conduct alleged herein and collectively referred to herein as “DEFENDANTS”.

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

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

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

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

1           9.       PLAINTIFF has been employed by DEFENDANTS as a non-exempt employee since July  
2 of 2015, is paid on an hourly basis, and entitled to the legally required meal and rest periods, payment  
3 of minimum wages, and payment of overtime wages due for all time worked.

4           10.       PLAINTIFF brings this Class Action on behalf of himself and on behalf of all persons  
5 who are or previously were employed by Defendant Drummac and/or Defendant Moran Environmental  
6 and/or Defendant Moran Towing in California and classified as non-exempt employees (the  
7 “CALIFORNIA CLASS”) at any time during the period beginning four years from the date of the filing  
8 of this Complaint and ending on a date determined by the Court (the “CLASS PERIOD”). The amount  
9 in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars  
10 (\$5,000,000.00). PLAINTIFF reserves the right to amend the following class definitions before the  
11 Court determines whether class certification is appropriate, or thereafter upon leave of Court.

12           11.       PLAINTIFF brings this Class Action on behalf of himself and on behalf of the  
13 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses  
14 incurred during the CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice which  
15 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest  
16 periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of  
17 California Labor Code Sections 226.7(c) and the applicable Industrial Welfare Commission Wage  
18 Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in violation  
19 of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to provide  
20 accurate itemized wage statements in violation of California Labor Code Sections 226 and 226.3.

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

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

1 **JURISDICTION AND VENUE**

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

6 15. Venue is proper in this Court pursuant to California Code of Civil Procedure, sections 395  
7 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, and DEFENDANTS (i)  
8 currently maintain and at all relevant times, maintained offices and facilities in this County and/or  
9 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged  
10 in this County against members of the CALIFORNIA CLASS.

11 16. PLAINTIFF reserves the right to amend the following class definitions before the Court  
12 determines whether class certification is appropriate, or thereafter upon leave of Court: All of current  
13 and former exempt employees employed by Defendant DRUMMAC, INC. and/or Defendant MORAN  
14 ENVIRONMENTAL RECOVERY, LLC and /or Defendant MORAN TOWING CORPORATION in  
15 California during the CLASS PERIOD.

16 **THE CONDUCT**

17 17. In violation of the applicable sections of the California Labor Code and the requirements  
18 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company  
19 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally  
20 compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members  
21 of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other  
22 members of the CALIFORNIA CLASS for all time worked, failed to compensate PLAINTIFF for off-  
23 the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS  
24 overtime at the regular rate, failed to compensate PLAINTIFF and other members of the CALIFORNIA  
25 CLASS meal and rest premiums at the regular rate, and failed to issue to PLAINTIFF and the members  
26 of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things,  
27 all applicable hourly rates in effect during the pay periods and the corresponding amount of time  
28 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to

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

5 **A. Meal Period Violations**

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

22 19. From time-to-time during the CLASS PERIOD, as a result of their rigorous work  
23 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA  
24 CLASS Members were from time to time unable to take thirty (30) minute off-duty meal breaks and  
25 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS  
26 Members were required from time to time to perform work as ordered by DEFENDANTS for more  
27 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from  
28 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-

1 duty meal period for some workdays in which these employees were required by DEFENDANTS to  
2 work ten (10) hours of work from time to time. The nature of the work performed by PLAINTIFF and  
3 other CALIFORNIA CLASS Members does not qualify for limited and narrowly construed “on-duty”  
4 meal period exception. When they were provided with meal periods, PLAINTIFF and other  
5 CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call.  
6 Further, PLAINTIFF and CALIFORNIA CLASS Members were required to maintain cordless  
7 communication devices on them during their meal periods and were expected to remain at the ready to  
8 respond to communications received on the devices, thereby forfeiting off-duty meal periods.  
9 PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks without  
10 additional compensation and in accordance with DEFENDANTS’ strict corporate policy and practice.

11 **B. Rest Period Violations**

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



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

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

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

13 23. The second component of PLAINTIFF’s and other CALIFORNIA CLASS Member’s  
14 compensation was DEFENDANTS’ non-discretionary incentive program that paid PLAINTIFF and  
15 other CALIFORNIA CLASS Members incentive wages based on their performance for  
16 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly  
17 basis with bonus, and/or commission compensation when the employees met the various performance  
18 goals set by DEFENDANTS. DEFENDANT gave PLAINTIFF and the CALIFORNIA CLASS  
19 received bonuses when the employees met various performance goals set by DEFENDANT.

20 24. Further, DEFENDANTS from time to time paid PLAINTIFF and other CALIFORNIA  
21 CLASS Members per diem compensation as a form of supplemental wages. The per diem  
22 compensation payments are identified as “Per Diem Reim” in the wage statements issued by  
23 DEFENDANTS to PLAINTIFF and other CALIFORNIA CLASS Members. The payment of per diem  
24 compensation was required to be calculated into PLAINTIFF’s and other CALIFORNIA CLASS  
25 Members’ regular rate of pay. (See *Clarke v. AMN Services, LLC*, 987 F.3d 848 (9th Cir. 2021).)

26 25. However, from-time-to-time, when calculating the regular rate of pay, in those pay  
27 periods where PLAINTIFF and the CALIFORNIA CLASS Members worked overtime and earned  
28 this non-discretionary bonus and/or incentive and/or per diem compensation, DEFENDANTS failed

1 to accurately include the non-discretionary bonus compensation and/or incentive and/or per diem  
2 compensation paid as part of the employees' "regular rate of pay" and/or calculated all hours worked  
3 rather than just all non-overtime hours worked. Further, when calculating the regular rate of pay in  
4 order to pay overtime, meal and rest period premiums, and sick pay to PLAINTIFF and the  
5 CALIFORNIA CLASS, DEFENDANTS failed to include the incentive and/or per diem compensation  
6 as part of the employees' "regular rate of pay" for purposes of calculating overtime, meal and rest  
7 period premiums, and sick pay. Management and supervisors described the incentive/bonus/per diem  
8 program to potential and new employees as part of the compensation package. As a matter of law, the  
9 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members must be  
10 included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment  
11 of overtime, meal and rest period premiums, and sick pay compensation to PLAINTIFF and other  
12 CALIFORNIA CLASS Members by DEFENDANTS.

13 26. As a matter of law, the bonus, incentive and per diem compensation received by  
14 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly calculated  
15 into the "regular rate of pay" for purposes of overtime compensation, meal and rest period premiums,  
16 and sick pay. DEFENDANTS' failure to do so has resulted in DEFENDANTS' systematic  
17 underpayment of overtime compensation, meal and rest period premiums, and sick pay to PLAINTIFF  
18 and other CALIFORNIA CLASS members. Specifically, California Labor Code Section 246 mandates  
19 that paid sick time for non-employees shall be calculated in the same manner as the regular rate of pay  
20 for the workweek in which the non-exempt employee uses paid sick time, whether or not the employee  
21 actually works overtime in that workweek. DEFENDANT'S conduct, as articulated herein, by failing  
22 to include the bonus, incentive, and per diem compensation as part of the "regular rate of pay" for  
23 purposes of sick pay compensation was in violation of Cal. Lab. Code § 246.

24 27. In violation of the applicable sections of the California Labor Code and the requirements  
25 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company  
26 policy, practice, and procedure, intentionally, and knowingly failed to compensate PLAINTIFF and  
27 the CALIFORNIA CLASS at the correct rate of pay for all overtime, meal and rest period premiums,  
28 and sick pay compensation. This uniform policy and practice of DEFENDANTS is intended to

1 purposefully avoid the payment of the correct overtime, meal and rest period premiums, and sick pay  
2 compensation as required by California law which allowed DEFENDANTS to illegally profit and gain  
3 an unfair advantage over competitors who complied with the law. To the extent equitable tolling  
4 operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD  
5 should be adjusted accordingly.

6 **D. Wage Statement Violations**

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

15 29. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
16 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal  
17 and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide  
18 PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements  
19 which failed to show, among other things, the total hours worked and all applicable hourly rates in  
20 effect during the pay period and the corresponding amount of time worked at each hourly rate, correct  
21 rates of pay for penalty payments or missed meal and rest periods.

22 30. In addition to the violations described above, DEFENDANTS, from time to time, failed  
23 to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply  
24 with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other members of  
25 the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,  
26 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional  
27 payroll error due to clerical or inadvertent mistake.

1 **E. CLASS ACTION ALLEGATIONS**

2 24. PLAINTIFF brings the First through Eighth Causes of Action as a class action pursuant  
3 to California Code of Civil Procedure § 382 on behalf of all persons who are or previously were  
4 employed by Defendant Drummac and/or Defendant Moran Environmental and/or Defendant Moran  
5 Towing in California and classified as non-exempt employees (“CALIFORNIA CLASS”) during the  
6 period beginning four years prior to the filing of the Complaint and ending on a date determined by the  
7 Court (“CLASS PERIOD”).

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

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

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

23 a. Whether DEFENDANTS maintained legally compliant meal period  
24 policies and practices;

25 b. Whether DEFENDANTS maintained legally compliant rest period  
26 policies and practices;

27 c. Whether DEFENDANTS failed to pay PLAINTIFF and the  
28 CALIFORNIA CLASS Members accurate premium payments for missed

1 meal and rest periods;

2 d. Whether DEFENDANTS failed to pay PLAINTIFF and the  
3 CALIFORNIA CLASS Members accurate overtime wages;

4 e. Whether DEFENDANTS failed to pay PLAINTIFF and the  
5 CALIFORNIA CLASS Members accurate sick pay;

6 f. Whether DEFENDANTS issued legally compliant wage statements;

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

10 h. Whether DEFENDANTS committed an act of unfair competition by  
11 systematically failing to record all meal and rest breaks missed by  
12 PLAINTIFF and other CALIFORNIA CLASS Members, even though  
13 DEFENDANTS enjoyed the benefit of this work, required employees to  
14 perform this work and permits or suffers to permit this work;

15 i. Whether DEFENDANTS committed an act of unfair competition in  
16 violation of the UCL, by failing to provide the PLAINTIFF and the other  
17 members of the CALIFORNIA CLASS with the legally required meal and  
18 rest periods.

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

21 29. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same  
22 interests as the other members of the class.

23 30. PLAINTIFF will fairly and adequately represent and protect the interests of the  
24 CALIFORNIA CLASS Members.

25 31. PLAINTIFF retained able class counsel with extensive experience in class action  
26 litigation.

27 32. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests  
28 of the other CALIFORNIA CLASS Members.

1           33.     There is a strong community of interest among PLAINTIFF and the members of the  
2 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient  
3 to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained.

4           34.     The questions of law and fact common to the CALIFORNIA CLASS Members  
5 predominate over any questions affecting only individual members, including legal and factual issues  
6 relating to liability and damages.

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

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

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

21           36.     Class treatment provides manageable judicial treatment calculated to bring an efficient  
22 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of  
23 DEFENDANTS.

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

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

7 38. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §  
8 17021.

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

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

20 Cal. Bus. & Prof. Code § 17203.

21 40. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA  
22 CLASS Members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in  
23 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the  
24 “UCL”), by engaging and continuing to engage in business practices which violates California law,  
25 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations  
26 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512,  
27 1194, 1197, 1197.1, & 1198 for which this Court should issue declaratory and other equitable relief  
28 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct  
held to constitute unfair competition, including restitution of wages wrongfully withheld.

41. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that  
these practices violated public policy, were immoral, unethical, oppressive, unscrupulous, or

1 substantially injurious to employees, and were without valid justification or utility for which this Court  
2 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &  
3 Professions Code, including restitution of wages wrongfully withheld.

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

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

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

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

25 46. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA  
26 CLASS Member, one (1) hour of pay for each workday in which an off duty paid rest period was not  
27 timely provided as required by law.

28 47. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the



1 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately  
2 calculated overtime and missed meal and rest periods premiums.

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

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

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

19 51. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,  
20 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and  
21 that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and  
22 unfair business practices in the future.

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

1 business practices.

2 **SECOND CAUSE OF ACTION**

3 **For Failure to Pay Overtime Compensation**

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

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

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

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

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

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

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

23 58. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were  
24 required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked  
25 or were not accurately compensated for all overtime hours worked.

26 59. DEFENDANTS’ uniform pattern of unlawful wage and hour practices manifested,  
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a  
28 uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other

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

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

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

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

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

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

1 rate as evidenced by DEFENDANTS' business records and witnessed by employees.

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

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

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

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

1 Members are entitled to seek and recover statutory costs.

2 **THIRD CAUSE OF ACTION**

3 **For Failure to Pay Minimum Wages**

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

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

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

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

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

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

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

19 74. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other  
20 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For  
21 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to  
22 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without  
23 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to  
24 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members  
25 of the CALIFORNIA CLASS.

26 75. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,  
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a  
28 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members

1 of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

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

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

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

24 81. In performing the acts and practices herein alleged in violation of California labor laws,  
25 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide  
26 them with the requisite compensation, DEFENDANTS acted and continue to act intentionally,  
27 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS  
28 with a conscious and utter disregard for their legal rights, or the consequences to them, and with the

1 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury  
2 in order to increase company profits at the expense of these employees.

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

13 **FOURTH CAUSE OF ACTION**

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

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

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

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

19 84. During the CLASS PERIOD, from time to time, DEFENDANTS failed to provide all the  
20 legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as  
21 required by the applicable Wage Order and Labor Code. The nature of the work performed by  
22 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being relieved  
23 of all their duties for the legally required off-duty meal periods. As a result of their rigorous work  
24 schedules, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time not fully  
25 relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to  
26 provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior  
27 to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records from time to time.  
28 Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a

1 second off-duty meal period in some workdays in which these employees were required by  
2 DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members of the  
3 CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in  
4 accordance with DEFENDANTS' strict corporate policy and practice.

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

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

13 **FIFTH CAUSE OF ACTION**

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

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

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

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

19 88. During the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members  
20 were from time to time required to work in excess of four (4) hours without being provided ten (10)  
21 minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)  
22 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at  
23 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second  
24 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from  
25 time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-  
26 hour wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other  
27 CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANTS  
28 and DEFENDANTS' managers.



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

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

9 **SIXTH CAUSE OF ACTION**

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

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

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

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

15 103. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
16 “accurate itemized” statement in writing showing:

- 17 1. Gross wages earned;
- 18 2. Total hours worked by the employee, except for any employee  
19 whose compensation is solely based on a salary and who is exempt from  
20 payment of overtime under subdivision (a) of Section 515 or any applicable  
21 order of the Industrial Welfare Commission;
- 22 3. The number of piece-rate units earned and any applicable piece rate  
23 if the employee is paid on a piece-rate basis;
- 24 4. All deductions, provided that all deductions made on written orders  
25 of the employee may be aggregated and shown as one item;
- 26 5. Net wages earned;
- 27 6. The inclusive dates of the period for which the employee is paid,
- 28 7. The name of the employee and his or her social security number,

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

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

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

7           104.    During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the  
8           other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed  
9           to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3)  
10          gross wages earned; and (4) all applicable hourly rates in effect during the pay period and the  
11          corresponding number of hours worked at each hourly rate by the employee in violation of California  
12          Labor Code Section 226(a).

13          105.    In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements  
14          to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of  
15          California Labor Code Section 226.

16          106.    DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §  
17          226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA  
18          CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for  
19          the overtime worked and the amount of employment taxes which were not properly paid to state and  
20          federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other  
21          members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)  
22          for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each  
23          violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and  
24          penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time  
25          of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective  
26          member of the CALIFORNIA CLASS herein.

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

3 **(Cal Lab. Code §§201, 202, 203)**

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

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

7 108. Cal. Lab. Code § 200 provides that:

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

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

15 110. Cal. Lab. Code § 202 provides, in relevant part, that:

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

22 111. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members'  
23 employment contract.

24 112. Cal. Lab. Code § 203 provides:

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

1 113. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated,  
2 and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest  
3 breaks, as required by law.

4 114. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members  
5 of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands up to thirty days of pay  
6 as penalty for not paying all wages due at time of termination for all employees who terminated  
7 employment during the CLASS PERIOD and demands an accounting and payment of all wages due,  
8 plus interest and statutory costs as allowed by law.

9 **EIGHTH CAUSE OF ACTION**

10 **UNPAID SICK PAY**

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

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

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

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

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

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

1 119. DEFENDANT's uniform policy and practice of omitting non-discretionary bonuses from  
2 the regular rate of pay for purposes of paying paid sick pay, resulted in the underpayment of sick pay  
3 wages to PLAINTIFF and other members of the CALIFORNIA CLASS. PLAINTIFF and other  
4 members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, including sick  
5 pay wages, according to proof, interest, statutory costs, as well as the assessment of any statutory  
6 penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other  
7 applicable statutes. To the extent sick pay is determined to be owed to other members of the  
8 CALIFORNIA CLASS who have terminated their employment, DEFENDANT's conduct also violates  
9 Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time  
10 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of other members of  
11 the CALIFORNIA CLASS. DEFENDANT'S conduct as alleged herein was willful, intentional and  
12 not in good faith. Further, PLAINTIFF and other members of the CALIFORNIA CLASS are entitled  
13 to seek and recover statutory costs.

14 **NINTH CAUSE OF ACTION**

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

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

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

18 120. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the  
19 prior paragraphs of this Complaint.

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

1           122. PLAINTIFF, and such persons that may be added from time to time who satisfy the  
2 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring  
3 this Representative Action on behalf of the State of California with respect to themselves and all  
4 individuals who are or previously were employed by DEFENDANT and classified as non-exempt  
5 employees in California during the time period of October 25, 2020 until the present (the  
6 "AGGRIEVED EMPLOYEES").

7           123. On October 25, 2021, PLAINTIFF gave written notice by certified mail to the Labor and  
8 Workforce Development Agency (the "Agency") and the employer of the specific provisions of  
9 this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached  
10 hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these  
11 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may now  
12 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State  
13 of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

14           124. The policies, acts and practices heretofore described were and are an unlawful business  
15 act or practice because DEFENDANTS (a) failed to properly record and pay PLAINTIFF and the other  
16 AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime hours in violation  
17 of the Wage Order, (b) failed to provide accurate itemized wage statements, (c) failed to provide  
18 mandatory meal breaks and rest breaks, (d) failed to pay meal and rest break premiums at the correct  
19 rate, and (e) failed to timely pay wages at the correct rate, all in violation of the applicable Labor Code  
20 sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202,  
21 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197,  
22 1197.1, 1197.14, 1198, 1199, 2802, 2804, and the applicable Industrial Wage Order(s), and thereby  
23 gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil  
24 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative  
25 of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other  
26 AGGRIEVED EMPLOYEES.

1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

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

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

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

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

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

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

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

1 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and  
2 1197; and

3 5. The wages of all terminated employees as a penalty from the due date thereof at the  
4 same rate until paid or until an action therefore is commenced, in accordance with Cal.  
5 Lab. Code § 203.

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

7 Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of  
8 2004;

9 3. On all claims:


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

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

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

14  
15 Dated: December 29, 2021

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


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

19 **DEMAND FOR JURY TRIAL**

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

21  
22 Dated: December 29, 2021

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

23  
24 By:   
25 Jean-Claude Lapuyade  
26 Attorneys for PLAINTIFF  
27  
28