

**SUMMONS
(CITACION JUDICIAL)**

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

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

FERRO AUTOMOTIVE GROUP, INC., a California corporation, and Does 1 through 50, Inclusive,

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

ANTHONY LOPEZ, an individual, in his representative capacity, on behalf of the State of California and fellow Aggrieved Employees,

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

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es): Hall of Justice
600 Union Ave
Fairfield, CA 94533

CASE NUMBER: (Número del Caso):
FCS 056500

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 - ZAKAY LAW GROUP, APLC, 3900 Old Town Avenue, Suite C204, San Diego, CA 92110 Tel: (619) 255-9047

DATE: 05/24/2021
(Fecha)

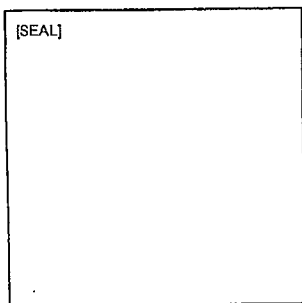
MAY 25 2021

Clerk, by
(Secretario)

R. PULIDO

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

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

VIA FAX



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Attorneys for Plaintiff
ANTHONY LOPEZ

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

ANTHONY LOPEZ, an individual, in his
representative capacity, on behalf of the State
of California and fellow Aggrieved Employees,

Plaintiff,

vs.

FERRO AUTOMOTIVE GROUP, INC., a
California corporation, and Does 1 through 50,
Inclusive,

Defendants.

FILED/ENDORSED
Clerk of the Superior Court

MAY 25 2021

By [Signature]
DEPUTY CLERK

\$ 1435
CMT # 402665

Case No.

FCS 056580

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1) VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT PURSUANT
TO LABOR CODE SECTIONS 2698, et
seq.

**ASSIGNED TO
JUDGE _____ E. Bradley Nelson
FOR ALL PURPOSES**

VIA FAX

1 Plaintiff ANTHONY LOPEZ (“PLAINTIFF”), an individual, in his representative capacity, on
2 behalf of the State of California and fellow Aggrieved Employees, acting as a private attorney general
3 under the Labor Code Private Attorney General Action of 2004, § 2699, *et seq.* (“PAGA”) only, alleges
4 on information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against FERRO AUTOMOTIVE GROUP, INC dba
8 FAIRFIELD CHEVROLET (“DEFENDANT” or “DEFENDANTS”) seeking only to recover PAGA
9 civil penalties for himself, and on behalf of all current and former aggrieved employees that worked for
10 DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as permitted by**
11 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those violations in
13 this action, but simply the civil penalties permitted by California Labor Code § 2699. Notwithstanding,
14 PLAINTIFF is not abandoning his right to pursue his individual claims for, *inter alia*, Defendant’s
15 alleged wage violations, and/or general or special damages arising from those violations, and he fully
16 intends to, at a future date, pursue claims for those individual claims and damages.

17 2. California has enacted the PAGA to permit an individual to bring an action on behalf of
18 herself and on behalf of others for PAGA penalties *only*, which is the precise and sole nature of this
19 action.

20 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANT’S
21 violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any other
22 relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be construed as
23 attempting to obtain any relief that would not be available in a PAGA-only action.

24 THE PARTIES

25 4. DEFENDANT is a California limited liability company and at all relevant times
26 mentioned owned and operated new and used car dealerships known as “FAIRFIELD CHEVROLET”
27 and “FAIRFIELD SUBURU” located in the City of Fairfield, County of Solano, State of California.
28

1 In addition to selling a variety of used and new automobiles, DEFENDANT also provides parts and
2 service through its Parts and Service Department.

3 5. PLAINTIFF was employed by DEFENDANT in California from July 2020 to January
4 2021 and was at all times during his employment with DEFENDANT paid in part an hourly wage,
5 piece-rate compensation, non-discretionary bonuses, and entitled to minimum wages, overtime pay and,
6 legally complaint meal and rest periods.

7 6. PLAINTIFF, and such persons that may be added from time to time who satisfy the
8 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
9 this Representative Action on behalf of the State of California with respect to himself and all individuals
10 who are or previously were employed by DEFENDANT in California (the "AGGRIEVED
11 EMPLOYEES") during the time period of March 17, 2020 until the present (the "PAGA PERIOD").

12 7. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or
13 formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action
14 pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S violation of California
15 Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512,
16 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, and the applicable
17 Wage Order. Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are
18 aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

19 8. The true names and capacities, whether individual, corporate, subsidiary, partnership,
20 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to
21 PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc.
22 Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and
23 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and
24 believes, and based upon that information and belief alleges, that the Defendants named in this
25 Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more
26 of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

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

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

6 **THE CONDUCT**

7 **A. Regular Rate Violation – Overtime and Sick Pay**

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

15 11. State law provides that employees must be paid overtime and sick pay at one-and-one-
16 half times their "regular rate of pay." PLAINTIFF and the AGGRIEVED EMPLOYEES were
17 compensated at an hourly rate plus a piece-rate and/or non-discretionary incentive pay that was tied to
18 specific elements of an employee's performance.

19 12. DEFENDANT's non-discretionary incentive program provided the AGGRIEVED
20 EMPLOYEES, including PLAINTIFF, with a piece-rate and/or bonus compensation when the
21 employees met the various performance goals set by DEFENDANT.

22 13. However, when calculating the regular rate of pay, in those pay periods where
23 PLAINTIFF and the AGGRIEVED EMPLOYEES worked overtime and earned non-discretionary
24 bonus and/or piece-rate wages, DEFENDANT failed to accurately include the flat-sum non-
25 discretionary bonus compensation and/or piece-rate wages as part of the employees' "regular rate of
26 pay".

27 14. In other instances, when calculating the regular rate of pay, in those pay periods where
28 PLAINTIFF and the AGGRIEVED EMPLOYEES worked overtime or earned sick pay, and earned this

1 flat-sum non-discretionary bonus, DEFENDANT failed to (1) accurately include the non-discretionary
2 bonus compensation into the regular rate of pay and/or (2) calculated all hours worked rather than just
3 all non-overtime hours worked into the regular rate of pay in violation of *Alvarado v. Dart* (2018) 4
4 Cal.5th 542.

5 15. Management and supervisors described the bonus and piece-rate programs and to potential
6 and new employees as part of the compensation package to non-exempt employees including
7 PLAINTIFF and the AGGRIEVED EMPLOYEES. As a matter of law, the incentive and piece-rate
8 compensation received by PLAINTIFFS and other AGGRIEVED EMPLOYEES members must be
9 included and correctly calculated into the “regular rate of pay” for purposes of overtime compensation.
10 DEFENDANT’S failure to do so has resulted in DEFENDANT’S systematic underpayment of overtime
11 compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES.

12 **B. Piece-Rate Violations**

13 16. From time-to-time during the PAGA PERIOD, PLAINTIFF and the AGGRIEVED
14 EMPLOYEES were paid in part on a piece-rate basis. In those instances where PLAINTIFF and the
15 CALIFORNIA CLASS were paid in part on a piece-rate basis, PLAINTIFF and the AGGRIEVED
16 EMPLOYEES were entitled to be separately compensated for all non-productive time at an hourly rate
17 that is no less than the applicable minimum wage. Notwithstanding, in those instances where
18 PLAINTIFF and the AGGRIEVED EMPLOYEES were paid in part on a piece-rate basis,
19 DEFENDANT’S failed to separately compensate PLAINTIFF and the AGGRIEVED EMPLOYEES
20 for all non-productive time, including but not limited to, paid rest periods, at an hourly rate that is no
21 less than the applicable minimum wage. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES
22 forfeited minimum wages and overtime wages by DEFENDANT’S failure to separately compensate
23 their non-productive time at an hourly rate that is no less than the applicable minimum wage.

24 **C. Meal and Rest Period Violations**

25 17. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor
26 Codes, an employer shall not employ an employee for a work period of more than 5 hours per day
27 without providing the employee with a meal period of not less than 30 minutes, except that if the total
28 work period per day of the employee is no more than 6 hours, the meal period may be waived by mutual

1 consent of both the employer and employee. An employer shall not employ an employee for a work
2 period of more than 10 hours per day without providing the employee with a second meal period of not
3 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal
4 period may be waived by mutual consent of the employer and the employee only if the first meal period
5 was not waived. If an employer fails to provide an employee with a mandated meal period, the employer
6 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
7 workday that the meal period is not provided.

8 18. From time-to-time during the PAGA PERIOD, as a result of understaffing and their
9 rigorous work schedule, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time
10 unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for meal
11 periods. PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time required to
12 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving
13 an off-duty meal break. Further, DEFENDANT from time-to-time failed to provide PLAINTIFF and
14 AGGRIEVED EMPLOYEES with a second off-duty meal period from time to time in which these
15 employees were required by DEFENDANT to work ten (10) hours of work from time to time.
16 PLAINTIFF and the other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without
17 additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.
18 DEFENDANT failed to maintain adequate staffing levels while increasing the production levels for each
19 employee.

20 19. Further, pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
21 required to pay PLANTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the
22 time during which an employee is subject to the control of an employer, including all the time the
23 employee suffered or permitted to work. DEFENDANT required PLANTIFF and AGGRIEVED
24 EMPLOYEES to work without paying them for all the time they were under the DEFENDANT's
25 control. Specifically, DEFENDANT required PLANTIFF to work while clocked out during what was
26 supposed to be PLAINTIFF's off duty meal break due to PLAINTIFF's rigorous work schedule and
27 DEFENDANT's understaffing. PLAINTIFF was from time to time interrupted by work assignments
28 while clocked out for what should have been PLAINTIFF's off-duty meal break. As a result, the

1 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
2 compensation by regularly working without their time being accurately recorded and without
3 compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy and
4 practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced
5 by DEFENDANT's business records.

6 20. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor
7 Codes, an employer shall authorize and permit all employees to take a rest period, which so far as
8 practical shall be in the middle of each work period. Generally, an employer must provide ten (10)
9 minutes of paid rest for every four hours or major fraction thereof. If an employer fails to provide an
10 employee a rest period, the employer shall pay the employee one (1) hour of pay at the employee's
11 regular rate of pay for each workday that the rest period is not provided.

12 21. Additionally, during the PAGA PERIOD, as a result of DEFENDANT's understaffing,
13 PLAINTIFF and other AGGRIEVED EMPLOYEES were from time-to-time required to work in excess
14 of four (4) hours without being provided duty-free, uninterrupted, ten (10) minute rest period. Further,
15 for the same reasons, these employees were denied their first rest periods of at least ten (10) minutes for
16 some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
17 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest
18 period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
19 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages in
20 lieu thereof.

21 **D. Wage Statement Violations**

22 22. California Labor Code Sections 226 and 226.2 require an employer to furnish its
23 employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
24 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5)
25 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
26 the employee and only the last four digits of the employee's social security number or an employee
27 identification number other than a social security number, (8) the name and address of the legal entity
28 that is the employer, (9) all applicable hourly rates in effect during the pay period and the corresponding

1 number of hours worked at each hourly rate by the employee; (10) the total hours of compensable rest
2 and recovery periods, the rate of compensation, and the gross wages paid for those periods during the
3 pay period, and (11) the total hours of other nonproductive time, the rate of compensation, and the gross
4 wages paid for that time during the pay period.

5 23. From time-to-time during the PAGA PERIOD, DEFENDANT furnished PLAINTIFF and
6 the AGGRIEVED EMPLOYEES written wage statements that failed to accurately show(1) gross wages
7 earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate,
8 (4) net wages earned, (5) all applicable hourly rates in effect during the pay period and the corresponding
9 number of hours worked at each hourly rate by the employee; (6) the total hours of compensable rest
10 and recovery periods, the rate of compensation, and the gross wages paid for those periods during the
11 pay period, and (7) the total hours of other nonproductive time, the rate of compensation, and the gross
12 wages paid for that time during the pay period.

13 24. As a result, DEFENDANTS issued PLAINTIFF and the AGGRIEVED EMPLOYEES
14 with wage statements that violate Cal. Lab. Code §§ 226 and 226.2. Further, DEFENDANTS' violations
15 are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or
16 inadvertent mistake.

17 **E. Failure to Reimburse Necessary Business Expenses**

18 25. During the PAGA PERIOD, DEFENDANTS as a matter of corporate policy, practice and
19 procedure, intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF
20 and the AGGRIEVED EMPLOYEES for required business expenses incurred in direct consequence of
21 discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802,
22 employers are required to indemnify employees for all expenses incurred in the course and scope of
23 their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct consequence of the
25 discharge of his or her duties, or of his or her obedience to the directions of the employer, even though
26 unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

27 26. In the course of her employment PLAINTIFF the AGGRIEVED EMPLOYEES as a
28 business expense, were required by DEFENDANTS to use their own personal cellular phones and

1 purchase tools and safety equipment, as a result of and in furtherance of their job duties as employees
2 for DEFENDANTS. Notwithstanding, DEFENDANTS failed to reimburse and/or indemnify
3 PLAINTIFF and the AGGRIEVED EMPLOYEES for the cost associated with the aforementioned
4 necessary business expenses. In some instances, DEFENDANTS required PLAINTIFF, the
5 AGGRIEVED EMPLOYEES to incur deposits for uniforms that were not reimbursed, in violation of
6 Lab. Code § 404. As a result, in the course of their employment with DEFENDANTS, PLAINTIFF,
7 the AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but were
8 not limited to, the costs associated with the use of their own personal cellular phones purchase of tools
9 and safety equipment in violation of Labor Code Section 2802.

10 **F. Failure to Pay Wages When Due**

11 27. As a result of the aforementioned conduct during the PAGA PERIOD, DEFENDANTS
12 willfully failed to pay PLAINTIFF the AGGRIEVED EMPLOYEES all wages due and owed by the
13 times set forth by Labor Code §§ 201, 202, and 204.

14 **JURISDICTION AND VENUE**

15 28. This Court has jurisdiction over this Action pursuant to California Code of Civil
16 Procedure, Section 410.10.

17 29. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
18 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained
19 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
20 committed the wrongful conduct herein alleged in this County against AGGRIEVED EMPLOYEES.

21 **FIRST CAUSE OF ACTION**

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

23 **[Cal. Lab. Code §§ 2698 et seq.]**

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

25 30. PLAINTIFF realleges and incorporate by this reference, as though fully set forth herein,
26 the prior paragraphs of this Complaint.

27 31. PAGA is a mechanism by which the State of California itself can enforce state labor laws
28 through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law

1 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
2 enforcement action designed to protect the public and not to benefit private parties. The purpose of
3 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
4 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
5 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
6 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly,
7 PAGA claims cannot be subject to arbitration.

8 32. PLAINTIFF, and such persons that may be added from time to time who satisfy the
9 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
10 this Representative Action on behalf of the State of California with respect to herself and all individuals
11 who are or previously were employed by DEFENDANT in California during the time period of March
12 17, 2020 until the present (the "AGGRIEVED EMPLOYEES").

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

20 34. The policies, acts and practices heretofore described were and are an unlawful business
21 act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES
22 minimum wages and separately compensated rest breaks at their regular rate of pay, (b) failed to provide
23 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to
24 provide accurate itemized wage statements, and (d) failed to timely pay wages, all in violation of the
25 applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code
26 §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d),
27 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, and the applicable Industrial Wage
28 Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby

1 seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
2 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
3 the other AGGRIEVED EMPLOYEES.

4 35. Some or all of the conduct and violations alleged herein occurred during the PAGA
5 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF
6 during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other
7 AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See
8 also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an
9 “aggrieved employee”—a person affected by **at least one** Labor Code violation committed by an
10 employer—to **pursue penalties for all the Labor Code violations committed by that employer.**”],
11 Emphasis added, reh'g denied (June 13, 2018).)


12
13 **PRAYER FOR RELIEF**

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

- 16 1. On behalf of the State of California and with respect to all AGGRIEVED
17 EMPLOYEES:
- 18 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
19 General Act of 2004; and
 - 20 b. An award of penalties, attorneys’ fees and costs of suit, as allowable under the
21 law.
- 22

23 Dated: May 21, 2021

Respectfully Submitted,
ZAKAY LAW GROUP, A.P.C.

24
25 By: 
26 Shani O. Zakay
27 Attorneys for Plaintiff
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EXHIBIT 1



3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Tel: 619-599-8292
Fax: 619-599-8291
Toll Free: 1-888-498-6999
www.jcl-lawfirm.com
Jean-Claude Lapuyade, Esq.
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March 17, 2021

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

FERRO AUTOMOTIVE GROUP, INC.

c/o Angel Ferro
2501 Martin Road
Fairfield, CA 94534

Via U.S. Certified Mail with Return Receipt No. 7019 1640 0000 6893 8648

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, and 2804 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/Madam:

Our office represents Plaintiff ANTHONY LOPEZ (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against FERRO AUTOMOTIVE GROUP, INC. (“Defendant”). Plaintiff was employed by Defendant in California from July 2020 until January 2021 as a non-exempt employee, entitled to minimum wages and overtime wages, and entitled to 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 at the correct rates, failed to provide them with California-compliant meal breaks and rest breaks, and failed to separately compensate some Aggrieved Employees for their rest breaks at their regular rate of pay. As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a), including failure to list the number of hours and hourly rate for certain remunerations. Additionally, Plaintiff contends that Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep accurate time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates 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, and 2804 violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

The Aggrieved Employees include all individuals who are or were previously employed by Defendant in any non-exempt and/or exempt positions.

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 filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. 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,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'Jean-Claude Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

1 JEAN-CLAUDE LAPUYADE (SBN 248676)
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13 FAX: (858) 404-9203
14 SHANI@ZAKAYLAW.COM

15 ATTORNEYS FOR PLAINTIFF MELINA WILSON

16 **SUPERIOR COURT OF CALIFORNIA**
17 **COUNTY OF SOLANO**

18 ANTHONY LOPEZ, an individual, on behalf
19 of himself, and on behalf of all persons
20 similarly situated,

21 Plaintiff,

22 vs.

23 FERRO AUTOMOTIVE GROUP, INC., a
24 California corporation, and Does 1 through 50,
25 Inclusive,

26 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, 1194 & 1198;
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 and 226.2; and,



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- 7. FAILURE TO PAY SICK PAY AT THE CORRECT RATE OF PAY IN VIOLATION OF CAL. LAB. CODE § 246;
- 8. FAILURE TO TIMELY PAY WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 and 203;
- 9. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802

DEMAND FOR JURY TRIAL

Plaintiff ANTHONY LOPEZ (“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 FERRO AUTOMOTIVE GROUP, INC., dba FAIRFIELD CHEVROLET (“DEFENDANT”) is a California limited liability company and at all relevant times mentioned owned and operated new and used car dealerships known as “FAIRFIELD CHEVROLET” and “FAIRFIELD SUBURU” located in the City of Fairfield, County of Solano, State of California. In addition to selling a variety of used and new automobiles, DEFENDANT also provides parts and service through its Parts and Service Department.

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 alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.



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

8 4. PLAINTIFF was employed by DEFENDANT in California as an hourly non-exempt
9 employee from July 2020 to January 2021, paid in part an hourly wage, piece-rate compensation, non-
10 discretionary bonuses, and entitled to minimum wages, overtime pay and, legally complaint meal and
11 rest periods.

12 5. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined
13 as all of DEFENDANT’S current and former non-exempt employees employed in California
14 (“CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of
15 this Complaint and ending on the date as determined by the Court (the “CALIFORNIA CLASS
16 PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS is under five
17 million dollars (\$5,000,000.00).

18 6. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA CLASS
19 in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
20 CALIFORNIA CLASS PERIOD caused by DEFENDANT’S uniform policy and practice which failed
21 to lawfully compensate these employees for all their unpaid wages and all their missed meal and rest
22 periods. DEFENDANT’S uniform policy and practice alleged herein was an unlawful, unfair and
23 deceptive business practice whereby DEFENDANT retained and continues to retain wages due
24 PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other members
25 of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
26 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who
27 have been economically injured by DEFENDANT’S past and current unlawful conduct, and all other
28 appropriate legal and equitable relief.

1 **THE CONDUCT**

2 **A. Regular Rate Violation – Overtime and Sick Pay**

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

10 8. State law provides that employees must be paid overtime and sick pay at one-and-one-
11 half times their “regular rate of pay.” PLAINTIFF and the CALIFORNIA CLASS were compensated
12 at an hourly rate plus a piece-rate and/or non-discretionary incentive pay that was tied to specific
13 elements of an employee’s performance.

14 9. DEFENDANT’s non-discretionary incentive program provided the CALIFORNIA
15 CLASS, including PLAINTIFF, with a piece-rate and/or bonus compensation when the employees met
16 the various performance goals set by DEFENDANT.

17 10. However, when calculating the regular rate of pay, in those pay periods where
18 PLAINTIFF and the CALIFORNIA CLASS worked overtime and earned non-discretionary bonus
19 and/or piece-rate wages, DEFENDANT failed to accurately include the flat-sum non-discretionary
20 bonus compensation and/or piece-rate wages as part of the employees’ “regular rate of pay”.

21 11. In other instances, when calculating the regular rate of pay, in those pay periods where
22 PLAINTIFF and the CALIFORNIA CLASS worked overtime or earned sick pay, and earned this flat-
23 sum non-discretionary bonus, DEFENDANT failed to (1) accurately include the non-discretionary
24 bonus compensation into the regular rate of pay and/or (2) calculated all hours worked rather than just
25 all non-overtime hours worked into the regular rate of pay in violation of *Alvarado v. Dart* (2018) 4
26 Cal.5th 542.

27 12. Management and supervisors described the bonus and piece-rate programs and to
28 potential and new employees as part of the compensation package to non-exempt employees including



1 PLAINTIFF and the CALIFORNIA CLASS. As a matter of law, the incentive and piece-rate
2 compensation received by PLAINTIFFS and other CALIFORNIA CLASS members must be included
3 and correctly calculated into the “regular rate of pay” for purposes of overtime compensation.
4 DEFENDANT’s failure to do so has resulted in DEFENDANT’s systematic underpayment of overtime
5 compensation to PLAINTIFF and other CALIFORNIA CLASS members.

6 **B. Piece-Rate Violations**

7 13. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and the
8 CALIFORNIA CLASS were paid in part on a piece-rate basis. In those instances where PLAINTIFF
9 and the CALIFORNIA CLASS were paid in part on a piece-rate basis, PLAINTIFF and the
10 CALIFORNIA CLASS were entitled to be separately compensated for all non-productive time at an
11 hourly rate that is no less than the applicable minimum wage. Notwithstanding, in those instances
12 where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a piece-rate basis,
13 DEFENDANT’S failed to separately compensate PLAINTIFF and the CALIFORNIA CLASS for all
14 non-productive time, including but not limited to, paid rest periods, at an hourly rate that is no less than
15 the applicable minimum wage. As a result, PLAINTIFF and the CALIFORNIA CLASS forfeited
16 minimum wages and overtime wages by DEFENDANT’S failure to separately compensate their non-
17 productive time at an hourly rate that is no less than the applicable minimum wage.

18 **C. Meal and Rest Period Violations**

19 14. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor
20 Codes, an employer shall not employ an employee for a work period of more than 5 hours per day
21 without providing the employee with a meal period of not less than 30 minutes, except that if the total
22 work period per day of the employee is no more than 6 hours, the meal period may be waived by mutual
23 consent of both the employer and employee. An employer shall not employ an employee for a work
24 period of more than 10 hours per day without providing the employee with a second meal period of not
25 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal
26 period may be waived by mutual consent of the employer and the employee only if the first meal period
27 was not waived. If an employer fails to provide an employee with a mandated meal period, the employer
28 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each

1 workday that the meal period is not provided.

2 15. From time-to-time during the CALIFORNIA CLASS PERIOD, as a result of
3 understaffing and their rigorous work schedule, PLAINTIFF and other CALIFORNIA CLASS
4 members were from time to time unable to take thirty (30) minute off duty meal breaks and were not
5 fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS Members were
6 from time to time required to perform work as ordered by DEFENDANT for more than five (5) hours
7 during a shift without receiving an off-duty meal break. Further, DEFENDANT from time-to-time
8 failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-duty meal period
9 from time to time in which these employees were required by DEFENDANT to work ten (10) hours of
10 work from time to time. PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited
11 meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate
12 policy and practice. DEFENDANT failed to maintain adequate staffing levels while increasing the
13 production levels for each employee at CARL BURGER DODGE, CHRYSLER, JEEP, RAM,
14 WORLD.

15 16. Further, pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
16 was required to pay PLANTIFF and CALIFORNIA CLASS members for all their time worked,
17 meaning the time during which an employee is subject to the control of an employer, including all the
18 time the employee suffered or permitted to work. DEFENDANT required PLANTIFF and
19 CALIFORNIA CLASS members to work without paying them for all the time they were under the
20 DEFENDANT's control. Specifically, DEFENDANT required PLANTIFF to work while clocked out
21 during what was supposed to be PLAINTIFF's off duty meal break due to PLAINTIFF's rigorous work
22 schedule and DEFENDANT's understaffing. PLAINTIFF was from time to time interrupted by work
23 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. As a
24 result, the PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum wage and
25 overtime compensation by regularly working without their time being accurately recorded and without
26 compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy
27 and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is
28 evidenced by DEFENDANT's business records.

1 17. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor
2 Codes, an employer shall authorize and permit all employees to take a rest period, which so far as
3 practical shall be in the middle of each work period. Generally, an employer must provide ten (10)
4 minutes of paid rest for every four hours or major fraction thereof. If an employer fails to provide an
5 employee a rest period, the employer shall pay the employee one (1) hour of pay at the employee's
6 regular rate of pay for each workday that the rest period is not provided.

7 18. Additionally, during the CALIFORNIA CLASS PERIOD, as a result of DEFENDANT's
8 understaffing of CARL BURGER DODGE, CHRYSLER, JEEP, RAM, WORLD, PLAINTIFF and
9 other CALIFORNIA CLASS members were from time-to-time required to work in excess of four (4)
10 hours without being provided duty-free, uninterrupted, ten (10) minute rest period. Further, for the
11 same reasons, these employees were denied their first rest periods of at least ten (10) minutes for some
12 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
13 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest
14 period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
15 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages
16 in lieu thereof.

17 **D. Wage Statement Violations**

18 19. California Labor Code Sections 226 and 226.2 require an employer to furnish its
19 employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
20 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5)
21 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
22 the employee and only the last four digits of the employee's social security number or an employee
23 identification number other than a social security number, (8) the name and address of the legal entity
24 that is the employer, (9) all applicable hourly rates in effect during the pay period and the corresponding
25 number of hours worked at each hourly rate by the employee; (10) the total hours of compensable rest
26 and recovery periods, the rate of compensation, and the gross wages paid for those periods during the
27 pay period, and (11) the total hours of other nonproductive time, the rate of compensation, and the gross
28 wages paid for that time during the pay period.



1 20. From time-to-time during the CALIFORNIA CLASS PERIOD, DEFENDANT
2 furnished PLAINTIFF and the CALIFORNIA CLASS written wage statements that failed to accurately
3 show(1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any
4 applicable piece-rate, (4) net wages earned, (5) all applicable hourly rates in effect during the pay period
5 and the corresponding number of hours worked at each hourly rate by the employee; (6) the total hours
6 of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those
7 periods during the pay period, and (7) the total hours of other nonproductive time, the rate of
8 compensation, and the gross wages paid for that time during the pay period.

9 21. As a result, DEFENDANTS issued PLAINTIFF and the CALIFORNIA CLASS with
10 wage statements that violate Cal. Lab. Code §§ 226 and 226.2. Further, DEFENDANTS' violations
11 are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical
12 or inadvertent mistake.

13 **E. Failure to Reimburse Necessary Business Expenses**

14 22. During the CALIFORNIA CLASS PERIOD, DEFENDANTS as a matter of corporate
15 policy, practice and procedure, intentionally, knowingly and systematically failed to reimburse and
16 indemnify PLAINTIFF and the CALIFORNIA CLASS for required business expenses incurred in
17 direct consequence of discharging their duties on behalf of DEFENDANTS. Under California Labor
18 Code Section 2802, employers are required to indemnify employees for all expenses incurred in the
19 course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
20 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
21 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of
22 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
23 believed them to be unlawful."

24 23. In the course of her employment PLAINTIFF the CALIFORNIA CLASS as a business
25 expense, were required by DEFENDANTS to use their own personal cellular phones and purchase tools
26 and safety equipment, as a result of and in furtherance of their job duties as employees for
27 DEFENDANTS. Notwithstanding, DEFENDANTS failed to reimburse and/or indemnify PLAINTIFF
28 and the CALIFORNIA CLASS for the cost associated with the aforementioned necessary business

1 expenses. In some instances, DEFENDANTS required PLAINTIFF, the CALIFORNIA CLASS and
2 the AGGRIEVED EMPLOYEES to incur deposits for uniforms that were not reimbursed, in violation
3 of Lab. Code § 404. As a result, in the course of their employment with DEFENDANTS, PLAINTIFF,
4 the CALIFORNIA CLASS and the AGGRIEVED EMPLOYEES incurred unreimbursed business
5 expenses which included, but were not limited to, the costs associated with the use of their own personal
6 cellular phones purchase of tools and safety equipment in violation of Labor Code Section 2802.

7 **F. Failure to Pay Wages When Due**

8 24. As a result of the aforementioned conduct during the PAGA PERIOD and CLASS
9 PERIOD, DEFENDANTS willfully failed to pay PLAINTIFF the CALIFORNIA CLASS and other
10 AGGRIEVED EMPLOYEES all wages due and owed by the times set forth by Labor Code §§ 201,
11 202, and 204.

12 25. The amount in controversy for PLAINTIFF individually does not exceed the sum or
13 value of \$75,000.

14 **JURISDICTION AND VENUE**

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

19 27. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
20 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained
21 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
22 committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA
23 CLASS and CALIFORNIA LABOR SUB-CLASS.

24 **THE CALIFORNIA CLASS**

25 28. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
26 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a Class Action,
27 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals
28 who are or previously were employed by DEFENDANT in California as Sales Consultants (the

1 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of
2 this Complaint and ending on the date as determined by the Court (the “CALIFORNIA CLASS
3 PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is
4 under five million dollars (\$5,000,000.00).

5 29. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
6 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

7 30. DEFENDANT, as a matter of company policy, practice and procedure, and in violation
8 of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and
9 the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a
10 practice whereby DEFENDANT systematically failed to correctly record missed meal and rest breaks
11 and all time worked by PLAINTIFF and the other members of the CALIFORNIA CLASS, even though
12 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted
13 or suffered to permit this work.

14 31. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
15 CLASS Member was paid the correct wages for all time worked. The DEFENDANT, however, as a
16 matter of uniform and systematic policy and procedure failed to have in place during the CALIFORNIA
17 CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every
18 CALIFORNIA CLASS Member is paid for all missed meal and rest breaks, so as to satisfy their burden.
19 This common business practice applicable to each and every CALIFORNIA CLASS Member can be
20 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &
21 Professions Code §§ 17200, et seq. (the “UCL”) as causation, damages, and reliance are not elements
22 of this claim.

23 32. At no time during the CALIFORNIA CLASS PERIOD was the compensation for any
24 member of the CALIFORNIA CLASS properly recalculated so as to compensate the employee for all
25 minimum and overtime wages due and missed meal and rest premiums owed, as required by California
26 Labor Code.

27 33. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA CLASS
28 Members is impracticable.

1 34. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
2 California law by:

3 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§
4 17200, et seq. (the "UCL"), by unlawfully, unfairly and/or deceptively having in place company
5 policies, practices and procedures that uniformly miscalculated overtime compensation and thereby,
6 under compensated PLAINTIFF and the members of the CALIFORNIA CLASS;

7 (b) Committing an act of unfair competition in violation of the UCL, by violating
8 Cal. Lab. Code §§ 510, et seq., by failing to pay the correct rate of pay for overtime pay to the
9 PLAINTIFF and the members of the CALIFORNIA CLASS, and retaining the unpaid overtime to the
10 benefit of DEFENDANT;

11 (c) Committing an act of unfair competition in violation of the California Unfair
12 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, et seq., by failing to provide PLAINTIFF and the
13 other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty
14 (30) minute meal breaks and the legally required off duty rest breaks; and,

15 (d) Committing an act of unfair competition in violation of the UCL, by violating
16 Cal. Lab. Code §§ 1194, 1197 & 1197.1, by unlawfully, unfairly and deceptively having in place
17 company policies, practices and procedures that uniformly denied PLAINTIFF and the members of the
18 CALIFORNIA CLASS the correct minimum wages and otherwise violated applicable law.

19 35. This Class Action meets the statutory prerequisites for the maintenance of a Class Action
20 as set forth in Cal. Code of Civ. Proc. § 382, in that:

21 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the
22 joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the
23 parties and the Court;

24 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
25 raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every
26 member of the CALIFORNIA CLASS;

27 (c) The claims of the representative PLAINTIFF are typical of the claims of each
28 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA

1 CLASS, was a Sales Consultant who was subjected to the DEFENDANT's deceptive practice and
2 policy which failed to pay minimum and overtime wages due and failed to provide the legally required
3 meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid
4 compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as
5 a result of DEFENDANT's employment practices. PLAINTIFF and the members of the
6 CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive,
7 unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and,

8 (d) The representative PLAINTIFF will fairly and adequately represent and protect
9 the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced
10 in Class Action litigation. There are no material conflicts between the claims of the representative
11 PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification
12 inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
13 CALIFORNIA CLASS Members.

14 36. In addition to meeting the statutory prerequisites to a Class Action, this action is properly
15 maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

16 (a) Without class certification and determination of declaratory, injunctive, statutory
17 and other legal questions within the class format, prosecution of separate actions by individual members
18 of the CALIFORNIA CLASS will create the risk of:

19 1) Inconsistent or varying adjudications with respect to individual members
20 of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties
21 opposing the CALIFORNIA CLASS; and/or,

22 2) Adjudication with respect to individual members of the CALIFORNIA
23 CLASS which would as a practical matter be dispositive of interests of the other members not party to
24 the adjudication or substantially impair or impede their ability to protect their interests.

25 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on
26 grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with
27 respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all
28 wages due to members of the CALIFORNIA CLASS as required by law;

1 1) With respect to the First Cause of Action, the final relief on behalf of the
2 CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim
3 PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute
4 unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as
5 may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

6 (c) Common questions of law and fact exist as to the members of the CALIFORNIA
7 CLASS, with respect to the practices and violations of California law as listed above, and predominate
8 over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is
9 superior to other available methods for the fair and efficient adjudication of the controversy, including
10 consideration of:

11 1) The interests of the members of the CALIFORNIA CLASS in
12 individually controlling the prosecution or defense of separate actions in that the substantial expense
13 of individual actions will be avoided to recover the relatively small amount of economic losses
14 sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense
15 and burden of individual prosecution of this litigation;

16 2) Class certification will obviate the need for unduly duplicative litigation
17 that would create the risk of:

18 A. Inconsistent or varying adjudications with respect to individual
19 members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for
20 the DEFENDANT; and/or,

21 B. Adjudications with respect to individual members of the
22 CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members
23 not parties to the adjudication or substantially impair or impede their ability to protect their interests;

24 3) In the context of wage litigation because a substantial number of
25 individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of
26 retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or
27 with a subsequent employer, the Class Action is the only means to assert their claims through a
28 representative; and,

1 4) A class action is superior to other available methods for the fair and
2 efficient adjudication of this litigation because class treatment will obviate the need for unduly and
3 unnecessary duplicative litigation that is likely to result in the absence of certification of this action
4 pursuant to Cal. Code of Civ. Proc. § 382.

5 37. This Court should permit this action to be maintained as a Class Action pursuant to Cal.
6 Code of Civ. Proc. § 382 because:

7 (a) The questions of law and fact common to the CALIFORNIA CLASS
8 predominate over any question affecting only individual CALIFORNIA CLASS Members because the
9 DEFENDANT's employment practices are uniform and systematically applied with respect to the
10 CALIFORNIA CLASS;

11 (b) A Class Action is superior to any other available method for the fair and efficient
12 adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of
13 employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid
14 asserting their rights individually out of fear of retaliation or adverse impact on their employment;

15 (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical
16 to bring all members of the CALIFORNIA CLASS before the Court;

17 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
18 obtain effective and economic legal redress unless the action is maintained as a Class Action;

19 (e) There is a community of interest in obtaining appropriate legal and equitable
20 relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining
21 adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted
22 upon the CALIFORNIA CLASS;

23 (f) There is a community of interest in ensuring that the combined assets of
24 DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for
25 the injuries sustained;

26 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
27 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the
28 CALIFORNIA CLASS as a whole;

1 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the
2 business records of DEFENDANT; and,

3 (i) Class treatment provides manageable judicial treatment calculated to bring a
4 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the
5 conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

6 38. DEFENDANT maintains records from which the Court can ascertain and identify by job
7 title each of DEFENDANT's employees who as have been systematically, intentionally and uniformly
8 subjected to DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF
9 will seek leave to amend the Complaint to include any additional job titles of similarly situated
10 employees when they have been identified.

11 **THE CALIFORNIA LABOR SUB-CLASS**

12 39. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh Causes
13 of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS
14 who are or previously were employed by DEFENDANT in California (the "CALIFORNIA LABOR
15 SUB-CLASS") at any time during the period three (3) years prior to the filing of the complaint and
16 ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD")
17 pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
18 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

19 40. DEFENDANT, as a matter of company policy, practice and procedure, and in violation
20 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and
21 the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a
22 practice whereby DEFENDANT failed to correctly calculate overtime wages due for all time worked
23 by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, even though
24 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted
25 or suffered to permit this work. DEFENDANT has uniformly denied these CALIFORNIA LABOR
26 SUB-CLASS Members wages to which these employees were entitled in order to unfairly cheat the
27 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
28 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-



1 CLASS PERIOD should be adjusted accordingly.

2 41. DEFENDANT maintains records from which the Court can ascertain and identify by
3 name and job title, each of DEFENDANT's employees who have been systematically, intentionally
4 and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein
5 alleged. PLAINTIFF will seek leave to amend the complaint to include any additional job titles of
6 similarly situated employees when they have been identified.

7 42. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
8 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

9 43. Common questions of law and fact exist as to members of the CALIFORNIA LABOR
10 SUB-CLASS, including, but not limited, to the following:

11 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay all
12 minimum and overtime wage compensation due to members of the CALIFORNIA LABOR SUB-
13 CLASS in violation of the California Labor Code and California regulations and the applicable
14 California Wage Order;

15 (b) Whether DEFENDANT failed to provide PLAINTIFF and the other members of
16 the CALIFORNIA LABOR SUB-CLASS with the legally required meal and rest periods;

17 (c) Whether DEFENDANT failed to provide PLAINTIFF and the other members of
18 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;

19 (d) Whether DEFENDANT has engaged in unfair competition by the above listed
20 conduct;

21 (e) The proper measure of damages and penalties owed to the members of the
22 CALIFORNIA LABOR SUB-CLASS; and

23 (f) Whether DEFENDANT's conduct was willful.

24 44. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
25 California law by:

26 (a) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
27 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing
28 showing the corresponding correct amount of wages earned by the employee, the total amount of hours

1 worked, and the correct legal entity that was their employer;

2 (b) Violating Cal. Lab. Code §§ 510, et seq., by misclassifying and thereby failing to
3 pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct
4 overtime pay for a workday longer than eight (8) hours and a workweek longer than forty (40) hours,
5 for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

6 (c) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 et seq., by failing to accurately
7 pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct
8 minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

9 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
10 and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted
11 thirty (30) minute meal breaks and the legally required off duty rest breaks; and,

12 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
13 employee is discharged or quits from employment, the employer must pay the employee all wages due
14 without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner
15 required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have
16 terminated their employment.

17 45. This Class Action meets the statutory prerequisites for the maintenance of a Class Action
18 as set forth in Cal. Code of Civ. Proc. § 382, in that:

19 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
20 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and
21 the disposition of their claims as a class will benefit the parties and the Court;

22 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
23 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply
24 uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;

25 (c) The claims of the representative PLAINTIFF are typical of the claims of each
26 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the
27 CALIFORNIA LABOR SUB-CLASS, was a Sales Consultant who was subjected to the
28 DEFENDANT's practice and policy as described herein. PLAINTIFF sustained economic injury as a

1 result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA
2 LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive,
3 unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and,

4 (d) The representative PLAINTIFF will fairly and adequately represent and protect
5 the interest of the CALIFORNIA LABOR SUB-CLASS and has retained counsel who are competent
6 and experienced in Class Action litigation. There are no material conflicts between the claims of the
7 representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would
8 make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will
9 vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

10 46. In addition to meeting the statutory prerequisites to a Class Action, this action is properly
11 maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

12 (a) Without class certification and determination of declaratory, injunctive, statutory
13 and other legal questions within the class format, prosecution of separate actions by individual members
14 of the CALIFORNIA LABOR SUB-CLASS will create the risk of:

15 1) Inconsistent or varying adjudications with respect to individual members
16 of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct
17 for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or,

18 2) Adjudication with respect to individual members of the CALIFORNIA
19 LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other
20 members not party to the adjudication or substantially impair or impede their ability to protect their
21 interests.

22 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
23 refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making
24 appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in
25 that DEFENDANT uniformly fails to pay all wages due, including the correct wages for all time worked
26 by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

27 (c) Common questions of law and fact predominate as to the members of the
28 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law

1 as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR
2 SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and
3 efficient adjudication of the controversy, including consideration of:

4 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS
5 in individually controlling the prosecution or defense of separate actions in that the substantial expense
6 of individual actions will be avoided to recover the relatively small amount of economic losses
7 sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the
8 substantial expense and burden of individual prosecution of this litigation;

9 2) Class certification will obviate the need for unduly duplicative litigation
10 that would create the risk of:

11 A. Inconsistent or varying adjudications with respect to individual
12 members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards
13 of conduct for the DEFENDANT; and/or,

14 B. Adjudications with respect to individual members of the
15 CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the
16 other members not parties to the adjudication or substantially impair or impede their ability to protect
17 their interests;

18 3) In the context of wage litigation because a substantial number of
19 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of
20 fear of retaliation by DEFENDANT, which may adversely affect an individual's job with
21 DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims
22 through a representative; and,

23 4) A class action is superior to other available methods for the fair and
24 efficient adjudication of this litigation because class treatment will obviate the need for unduly and
25 unnecessary duplicative litigation that is likely to result in the absence of certification of this action
26 pursuant to Cal. Code of Civ. Proc. § 382.

27 47. This Court should permit this action to be maintained as a Class Action pursuant to Cal.
28 Code of Civ. Proc. § 382 because:

1 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-
2 CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS
3 Members;

4 (b) A Class Action is superior to any other available method for the fair and efficient
5 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the
6 context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-
7 CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse
8 impact on their employment;

9 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
10 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

11 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
12 not be able to obtain effective and economic legal redress unless the action is maintained as a Class
13 Action;

14 (e) There is a community of interest in obtaining appropriate legal and equitable
15 relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining
16 adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted
17 upon the CALIFORNIA LABOR SUB-CLASS;

18 (f) There is a community of interest in ensuring that the combined assets of
19 DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR
20 SUB-CLASS for the injuries sustained;

21 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
22 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect
23 to the CALIFORNIA LABOR SUB-CLASS as a whole;

24 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
25 ascertainable from the business records of DEFENDANT; and,

26 (i) Class treatment provides manageable judicial treatment calculated to bring a
27 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the
28 conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

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 48. 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 49. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code §
8 17021.

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

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

20 Cal. Bus. & Prof. Code § 17203.

21 51. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
22 business practice which violates California law, including but not limited to, the applicable Industrial
23 Wage Order(s), the California Code of Regulations and the California Labor Code including Sections
24 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1 & 1198, for which this Court should issue
25 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary
26 to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages
27 wrongfully withheld.

28 52. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair in

1 that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or
2 substantially injurious to employees, and were without valid justification or utility for which this Court
3 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
4 Professions Code, including restitution of wages wrongfully withheld.

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

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

16 55. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
17 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide all
18 legally required meal and rest breaks to PLAINTIFF and the other members of the CALIFORNIA
19 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

28 58. By and through the unlawful and unfair business practices described herein,



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

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

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

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

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

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28 ////

1 **SECOND CAUSE OF ACTION**

2 For Failure to Pay Minimum Wages

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

4 (By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

5 and Against All Defendants)

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

9 64. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring
10 a claim for DEFENDANT’s willful and intentional violations of the California Labor Code and the
11 Industrial Welfare Commission requirements for DEFENDANT’s failure to accurately calculate and
12 pay minimum wages.

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

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

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

20 68. As set forth above, during the CALIFORNIA LABOR SUB-CLASS PERIOD,
21 DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of
22 the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they worked.
23 As set forth herein, DEFENDANT’s uniform policy and practice was to unlawfully and intentionally
24 deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA
25 LABOR SUB-CLASS.

26 69. DEFENDANT’s uniform pattern of unlawful wage and hour practices manifested,
27 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
28 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF and the



1 other members of the CALIFORNIA LABOR SUB-CLASS regarding minimum wage pay.

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

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

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

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

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

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

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

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

15 **THIRD CAUSE OF ACTION**

16 For Failure to Pay Overtime Compensation

17 [Cal. Lab. Code §§ 510, 1194 and 1198]

18 (By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

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

22 78. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring
23 a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the
24 Industrial Welfare Commission requirements for DEFENDANTS' failure to properly compensate the
25 members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked, including, work
26 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek during
27 the CALIFORNIA LABOR SUB-CLASS PERIOD.

28 79. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public

1 policy, an employer must timely pay its employees for all hours worked.

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

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

9 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
10 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
11 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

19 84. In committing these violations of the California Labor Code, DEFENDANT acted in an
20 illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California
21 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
22 regulations.

23 85. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
24 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive full
25 compensation for all overtime worked.

26 86. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the
27 overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the
28 other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFF and the other

1 members of the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective bargaining
2 agreement that would preclude the causes of action contained herein this Complaint. Rather,
3 PLAINTIFF bring this Action on behalf of himself and the CALIFORNIA LABOR SUB-CLASS based
4 on DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of
5 California.

6 87. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than they were
8 entitled to, constituting a failure to pay all earned wages.

9 88. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
10 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in excess
11 of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
12 though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were required
13 to work, and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay
14 using the applicable overtime rate as evidenced by DEFENDANT's business records and witnessed by
15 employees.

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

21 90. DEFENDANT knew or should have known that PLAINTIFF and the other members of
22 the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime worked.
23 DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance, to
24 not pay employees for their labor as a matter of uniform company policy, practice and procedure, and
25 DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS the applicable overtime rate.

27 91. In performing the acts and practices herein alleged in violation of California labor laws,
28 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time

1 worked and provide them with the requisite overtime compensation, DEFENDANT acted and continue
2 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
3 CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or the
4 consequences to them, and with the despicable intent of depriving them of their property and legal
5 rights, and otherwise causing them injury in order to increase company profits at the expense of these
6 employees.

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

18 **FOURTH CAUSE OF ACTION**

19 For Failure to Provide Required Meal Periods

20 [Cal. Lab. Code §§ 226.7 & 512]

21 (By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

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

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

1 employees from being relieved of all of their duties for the legally required off-duty meal periods. As
2 a result of their rigorous work schedules, PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
3 were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
4 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS with
5 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's
6 business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
7 CLASS therefore forfeited meal breaks without additional compensation and in accordance with
8 DEFENDANT's strict corporate policy and practice.

9 95. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC
10 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
11 Members who were not provided a meal period, in accordance with the applicable Wage Order, one
12 additional hour of compensation at each employee's regular rate of pay for each workday that a meal
13 period was not provided.

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

17 **FIFTH CAUSE OF ACTION**

18 For Failure to Provide Required Rest Periods

19 [Cal. Lab. Code §§ 226.7 & 512]

20 (By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

21 97. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
22 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
23 Complaint.

24 98. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
25 CALIFORNIA LABOR SUB-CLASS were also required to work in excess of four (4) hours without
26 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
27 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first
28 and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight

1 (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of
2 ten (10) hours or more. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS were also not
3 provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
4 and the CALIFORNIA LABOR SUB-CLASS were periodically denied their proper rest periods by
5 DEFENDANT and DEFENDANT's managers.

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

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

14 **SIXTH CAUSE OF ACTION**

15 For Failure to Provide Accurate Itemized Statements

16 [Cal. Lab. Code § 226 and 226.2]

17 (By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

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

21 102. Cal. Labor Code § 226 provides that an employer must furnish employees with an
22 "accurate itemized" statement in writing showing: (1) Gross wages earned; (2) Total hours worked by
23 the employee, except for any employee whose compensation is solely based on a salary and who is
24 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the
25 Industrial Welfare Commission; (3) The number of piece-rate units earned and any applicable piece
26 rate if the employee is paid on a piece-rate basis; (4) All deductions, provided that all deductions made
27 on written orders of the employee may be aggregated and shown as one item; (5) Net wages earned;
28 (6) The inclusive dates of the period for which the employee is paid,; (7) The name of the employee

1 and his or her social security number, except that by January 1, 2008, only the last four digits of his or
2 her social security number or an employee identification number other than a social security number
3 may be shown on the itemized statement; (8) The name and address of the legal entity that is the
4 employer, and (9) All applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee.

6 103. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANTS also failed to
7 provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with
8 complete and accurate wage statements which failed to accurately show, among other things, (1) Gross
9 wages earned; (2) Total hours worked by the employee, (3) The number of piece-rate units earned and
10 any applicable piece rate if the employee is paid on a piece-rate basis; (4) All deductions; (5) Net wages
11 earned; and (6) all applicable hourly rates in effect during the pay period and the corresponding number
12 of hours worked at each hourly rate.

13 104. Further, during the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANTS
14 also failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
15 with complete and accurate wage statements in compliance with Cal. Labor Code Section 226.2, which
16 failed to accurately show, among other things: (1) the total hours of compensable rest and recovery
17 periods; and (2) the total hours of other nonproductive time, the rate of compensation for the
18 nonproductive time and the gross wages paid for the nonproductive time during the applicable pay
19 period.

20 105. PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS were
21 injured by DEFENDANTS' violations in that they could not promptly and easily determine from the
22 wage statement alone, the amount of gross or net wages paid, the total hours worked, the number of
23 piece-rate units earned and any applicable piece-rate, all applicable hourly rates in effect during the pay
24 period and the corresponding number of hours worked at each hourly rate to the employee during the
25 applicable pay period.

26 106. DEFENDANTS violations of Cal. Labor Code § 226 and 226.2 were knowing and
27 intentional in that DEFENDANTS willfully intended to issue wage statements that were out of
28 compliance with § 226 and 226.2.

1 107. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §
 2 226 and 226.2, causing injury and damages to the PLAINTIFF and the other members of the
 3 CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the
 4 correct rates for the overtime worked and the amount of employment taxes which were not properly
 5 paid to state and federal tax authorities. These damages are difficult to estimate. Therefore,
 6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover
 7 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred,
 8 and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab.
 9 Code § 226, and all other damages and penalties available pursuant to Labor Code § 226.2(a)(6), all in
 10 an amount according to proof at the time of trial (but in no event more than four thousand dollars
 11 (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein.

SEVENTH CAUSE OF ACTION

Failure to Pay Sick Pay at the Correct Rate of Pay

(Cal. Lab. Code § 246)

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against All DEFENDANTS)

16 108. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by
 17 this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

22 110. From time-to-time, during the CALIFORNIA LABOR SUB-CLASS PERIOD,
 23 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS were compensated at an hourly rate plus
 24 either non-discretionary incentive pay or piece-rate compensation. As a matter of law, the incentive
 25 compensation and/or piece-rate compensation received by PLAINTIFF and the CALIFORNIA
 26 LABOR SUB-CLASS must be included in the “regular rate of pay.”

27 111. From time-to-time during the CALIFORNIA LABOR SUB-CLASS PERIOD, in those
 28 pay periods where PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS earned hourly

1 compensation and either non-discretionary incentive compensation or piece-rate compensation, and
2 took paid sick time, DEFENDANTS failed to properly calculate the regular rate of pay for purposes of
3 compensating paid sick time by omitting non-discretionary incentive pay and/or piece-rate
4 compensation from the regular rate of pay.

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

19 **EIGHTH CAUSE OF ACTION**

20 For Failure to Timely Pay Wages When Due

21 [Cal. Lab. Code §§ 201, 202, 203]

22 (By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

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

26 114. Cal. Lab. Code § 200 provides, in relevant part, that:

27 As used in this article:(a) "Wages" includes all amounts for labor performed by
28 employees of every description, whether the amount is fixed or ascertained by the

1 standard of time, task, piece, Commission basis, or other method of calculation. (b)
2 "Labor" includes labor, work, or service whether rendered or performed under contract,
3 subcontract, partnership, station plan, or other agreement if the labor to be paid for is
4 performed personally by the person demanding payment.

5 115. Cal. Lab. Code § 201 provides, in relevant part, “that If an employer discharges an
6 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

7 116. Cal. Lab. Code § 202 provides, in relevant part, that:

8 If an employee not having a written contract for a definite period quits his or her
9 employment, his or her wages shall become due and payable not later than 72 hours
10 thereafter, unless the employee has given 72 hours previous notice of his or her intention
11 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
12 Notwithstanding any other provision of law, an employee who quits without providing a
13 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
14 designates a mailing address. The date of the mailing shall constitute the date of payment
15 for purposes of the requirement to provide payment within 72 hours of the notice of
16 quitting.

17 117. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR SUB-
18 CLASS Members’ employment contract.

19 118. Cal. Lab. Code § 203 provides, in relevant part, that:

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

25 119. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
26 Members terminated and DEFENDANT has not tendered payment of all wages owed as required by
27 law.

28 120. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members

1 of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and who have unpaid
2 minimum and/or overtime wages and/or missed meal and rest breaks without being paid the legally
3 required penalties by DEFENDANT, PLAINTIFF demands up to thirty days of pay as penalty for not
4 timely paying all wages due at time of termination for all employees who terminated employment
5 during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and statutory costs as allowed
6 by law.

7 **EIGHT CAUSE OF ACTION**

8 Failure to Reimburse Employees for Required Expenses

9 [Cal. Labor Code § 2802]

10 (By PLAINTIFF and CLASS MEMBERS Against DEFENDANTS)

11 121. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
12 reallege and incorporate by this reference, as though fully set forth, the prior paragraphs of this
13 Complaint.

14 122. California Labor Code § 2802(a) requires an employer to indemnify an employee for all
15 necessary expenditures or losses incurred by the employee in direct consequences of the discharge of
16 his or her duties, or of his or her obedience to the directions of the employer.

17 123. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANTS knowingly
18 and willfully failed to indemnify PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS for all
19 business expenses and/or losses incurred in direct consequence of the discharge of their duties while
20 working under the direction of DEFENDANTS, including but not limited to expenses for cell phone
21 usage, tool reimbursements, and other employment-related expenses, in violation of California Labor
22 Code § 2802.

23 124. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF
24 and the CALIFORNIA LABOR SUB-CLASS have been damaged in an amount according to proof at
25 trial, and seek reimbursement of all necessary expenditures, plus interest thereon, pursuant to California
26 Labor Code § 2802(b). Additionally, PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS are
27 entitled to all available statutory penalties and an award of costs, expenses, and reasonable attorney's
28 fees, including those provided in California Labor Code § 2802(c), as well as other available remedies.

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
6 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

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

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

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

14 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

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

18 B) Compensatory damages, according to proof at trial, including compensatory
19 damages for minimum wages, overtime wage and sick pay compensation due PLAINTIFF and the
20 other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
21 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

22 C) Meal and rest period compensation pursuant to California Labor Code Section
23 226.7 and the applicable IWC Wage Order;

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

28 F) The wages of all terminated employees in the CALIFORNIA LABOR SUB

1 CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is
2 commenced, in accordance with Cal. Lab. Code § 203.

3 G) Reimbursement for necessary expenses incurred by PLAINTIFF and the other
4 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR
5 SUB-CLASS PERIOD.

6 3. On all claims:

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

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

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

11 Dated: March 4, 2021

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

12
13 By: 
14 Jean-Claude Lapuyade
15 Attorneys for Plaintiff

16 **DEMAND FOR JURY TRIAL**

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

18
19 Dated: March 4, 2021

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

20
21 By: 
22 Jean-Claude Lapuyade
23 Attorneys for Plaintiff
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