

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
d/donkin
By _____, Deputy
Case Number:
34-2022-00316664

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

FREEWAY INSURANCE SERVICES AMERICA, LLC, an Illinois Limited Liability Company; FREEWAY INSURANCE SERVICES, INC., a California Corporation; CONFIE SEGUROS CALIFORNIA, LLC, a California Limited Liability Company; CONFIE HOLDING II CO., a California Corporation; CONFIE SEGUROS, INC., a Delaware Corporation; and DOES 1-50, Inclusive,

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

BRYAN KELLY, an individual(s), on behalf of himself and on behalf of all persons similarly situated,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Sacramento Superior Court, Gordon D. Schaber Courthouse
720 9th Street
Sacramento, CA 95814

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, CA San Diego 92121

DATE: **MAR 11 2022** Clerk, by D. DONKIN, Deputy
(Fecha) (Secretario) (Adjunto)

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

NOTICE TO THE PERSON SERVED: You are served

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



FILED
Superior Court Of California,
Sacramento
03/10/2022
ddonkln
By _____, Deputy
Case Number:
34-2022-00316664

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Attorneys for Plaintiff BRYAN KELLY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

BRYAN KELLY, an individual(s), on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

FREEWAY INSURANCE SERVICES
AMERICA, LLC, an Illinois Limited Liability
Company; FREEWAY INSURANCE
SERVICES, INC., a California Corporation;
CONFIE SEGUROS CALIFORNIA, LLC, a
California Limited Liability Company;
CONFIE HOLDING II CO., a California
Corporation; CONFIE SEGUROS, INC., a
Delaware Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN

Via Fax

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

DEMAND FOR A JURY TRIAL

Plaintiff BRYAN KELLY (“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 FREEWAY INSURANCE SERVICES AMERICA, LLC (“Defendant Freeway Insurance Services America”) is an Illinois limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Sacramento.

2. Defendant FREEWAY INSURANCE SERVICES, INC. (“Defendant Freeway Insurance Services”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Sacramento.

3. Defendant CONFIE SEGUROS CALIFORNIA, LLC (“Defendant Confie Seguros California”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Sacramento.

4. Defendant CONFIE HOLDING II CO (“Defendant Confie Holding”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Sacramento.

5. Defendant CONFIE SEGUROS, INC. (“Defendant Confie Seguros”) is Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Sacramento.

6. Defendant Freeway Insurance Services America, Defendant Freeway Insurance Services, Defendant Confie Seguros, Defendant Confie Holding and Defendant Confie Seguros were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company

1 the PLAINTIFF performed work for respectively, and are therefore jointly responsible as
2 employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS”
3 and/or “DEFENDANT.”

4 7. DEFENDANT is a provider of insurance services in the State of California,
5 including Sacramento County, where PLAINTIFF worked.

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

16 9. The agents, servants, and/or employees of the Defendants and each of them acting
17 on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as
18 the agent, servant and/or employee of the Defendants, and personally participated in the conduct
19 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
20 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
21 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
22 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
23 Defendants’ agents, servants and/or employees.

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

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

6 12. PLAINTIFF was employed by DEFENDANT in California from January of 2019
7 to July of 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid
8 in part on a commission basis, and entitled to the legally required meal and rest periods and
9 payment of minimum and overtime wages due for all time worked.

10 13. PLAINTIFF brings this Class Action on behalf of himself and a California class,
11 defined as all persons who are or previously were employed by Defendant Freeway Insurance
12 Services America and/or Defendant Freeway Insurance Services and/or Defendant Confie
13 Seguros California and/or Defendant Confie Holding and/or Defendant Confie Seguros in
14 California and classified as non-exempt employees, including those who were paid in whole or in
15 part on a commission and/or piece-rate basis (the “CALIFORNIA CLASS”) at any time during
16 the period beginning four (4) years prior to the filing of this Complaint and ending on the date as
17 determined by the Court (the “CLASS PERIOD”). The amount in controversy for the aggregate
18 claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

19 14. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
20 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
21 the CLASS PERIOD caused by DEFENDANT’s uniform policy and practice which failed to
22 lawfully compensate these employees.

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

26 16. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
27 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
28 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically

1 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and
2 equitable relief.

3 **JURISDICTION AND VENUE**

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

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

13 **THE CONDUCT**

14 19. In violation of the applicable sections of the California Labor Code and the
15 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
16 matter of company policy, practice and procedure, intentionally, knowingly and systematically
17 failed to provide legally compliant meal and rest periods, failed to accurately compensate
18 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
19 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
20 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to reimburse
21 PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue
22 to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage
23 statements showing, among other things, the total hours worked and all applicable hourly rates in
24 effect during the pay periods and the corresponding amount of time worked at each hourly rate.
25 Importantly, PLAINTIFF was not provided with minimum wages for all of his non-commission
26 earning work time when DEFENDANTS only paid PLAINTIFF and other CALIFORNIA
27 CLASS Members a commission on insurance sales, regardless of how many hours were worked,
28 and regardless of how much time was spent working. PLAINTIFF also did not receive compliant
meal and rest breaks as required by California law when being paid a piece rate by DEFENDANT.

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

6 **A. Commission and Piece-Rate Violations**

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

20 **B. Meal Period Violations**

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

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

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

25 **C. Rest Period Violations**

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

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

15 24. In addition, because of DEFENDANTS' pay plan for PLAINTIFF and
16 CALIFORNIA CLASS Members (being paid on a commission and/or piece rate basis),
17 DEFENDANTS failed to compensate PLAINTIFF and CALIFORNIA CLASS Members for their
18 rest periods at the regular rate of pay as required by the applicable Wage Order and Labor Code.
19 DEFENDANTS did not have a policy or practice which paid for off-duty rest periods to
20 PLAINTIFF and the other CALIFORNIA CLASS Members when they were paid piece rate pay
21 only. As a result, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS
22 Members with all the legally required paid rest periods is evidenced by DEFENDANTS' business
23 records.

24 **D. Unreimbursed Business Expenses**

25 25. DEFENDANTS as a matter of corporate policy, practice, and procedure,
26 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
27 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and
28 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf

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

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

20 **E. Wage Statement Violations**

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

1 28. When PLAINTIFF and other CALIFORNIA CLASS Members were from time to
2 time required to miss meal and rest breaks, and/or were not paid all minimum and overtime wages
3 owed to them, DEFENDANTS also failed to provide PLAINTIFF and the other members of the
4 CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among
5 other things, the correct wages paid, including the wages paid for missed meal and rest breaks.
6 Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees
7 with an accurate itemized wage statement in writing showing, among other things, gross wages
8 earned and all applicable hourly rates in effect during the pay period and the corresponding
9 amount of time worked at each hourly rate.

10 29. In addition to the violations described above, DEFENDANTS, from time to time,
11 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
12 that comply with Cal. Lab. Code § 226.

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

17 **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

18 31. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
19 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
20 CLASS for all hours worked.

21 32. During the CLASS PERIOD, from time-to-time DEFENDANTS required
22 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work pre-shift, post-
23 shift, and during a scheduled meal break while off the clock. This resulted in PLAINTIFF and
24 other members of the CALIFORNIA CLASS having to work while off-the-clock.

25 33. DEFENDANTS from time to time directed and directly benefited from the
26 uncompensated off-the-clock work performed by PLAINTIFF and the other members of the
27 CALIFORNIA CLASS.

28

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

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

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

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

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

19 39. As a result, from time to time, PLAINTIFF and the other members of the
20 CALIFORNIA CLASS forfeited wages due them for all hours worked at DEFENDANTS'
21 direction, control and benefit for the time spent performing work before and after shifts, receiving
22 and responding to work-related communications on personal cell phones outside of their
23 scheduled shifts and working while clocked out for meal periods. DEFENDANTS' uniform
24 policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages
25 for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
26 records.

27 40. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
28 the CALIFORNIA CLASS were paid in part on a piece-rate basis. In those instances where

1 PLAINTIFF and the CALIFORNIA CLASS were paid in part on a piece-rate basis, PLAINTIFF
2 and the CALIFORNIA CLASS were entitled to be separately compensated for all non-productive
3 time at an hourly rate that is no less than the applicable regular rate of pay. Notwithstanding, in
4 those instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a piece-
5 rate basis, DEFENDANTS failed to separately compensate PLAINTIFF and the CALIFORNIA
6 CLASS for all non-productive time, including but not limited to, paid rest periods, at an hourly
7 rate that is no less than the applicable regular rate of pay. As a result, PLAINTIFF and the
8 CALIFORNIA CLASS forfeited minimum wages and overtime wages by DEFENDANTS’
9 failure to separately compensate their non-productive time at an hourly rate that is no less than
10 the applicable regular rate of pay.

11 **G. Regular Rate Violation- Overtime, Double Time, Meal and Rest Period Premiums, and**
12 **Sick Pay**

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

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

26 43. The second component of PLAINTIFF’S and other CALIFORNIA CLASS
27 members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
28 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for

1 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
2 basis with bonus compensation when the employees met the various performance goals set by
3 DEFENDANTS.

4 44. However, from-time-to-time, when calculating the regular rate of pay, in those pay
5 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
6 time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-
7 discretionary compensation, DEFENDANTS failed to accurately include the non-discretionary
8 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked
9 rather than just all non-overtime hours worked. As a matter of law, the compensation received
10 by PLAINTIFF and other CALIFORNIA CLASS members must be included in the "regular rate
11 of pay." The failure to do so has resulted in a systematic underpayment of overtime and double
12 time compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other
13 CALIFORNIA CLASS members by DEFENDANTS. Specifically, California Labor Code
14 Section 246 mandates that paid sick time for non-employees shall be calculated in the same
15 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid
16 sick time, whether or not the employee actually works overtime in that workweek.
17 DEFENDANTS' conduct, as articulated herein, by failing to include the incentive compensation
18 as part of the "regular rate of pay" for purposes of overtime, double time, paid meal and rest period
19 premium payments, and/or paid sick pay compensation was in violation of Cal. Lab. Code § 246
20 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or
21 204.

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

1 and sick pay as required by California law which allowed DEFENDANTS to illegally profit and
2 gain an unfair advantage over competitors who complied with the law. To the extent equitable
3 tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANTS,
4 the CLASS PERIOD should be adjusted accordingly.

5 **H. Violation for Untimely Payment of Wages**

6 46. Pursuant to California Labor Code section 204, PLAINTIFF and the
7 CALIFORNIA CLASS members were entitled to timely payment of wages during their
8 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
9 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
10 meal period premium wages, and rest period premium wages within permissible time period.

11 **I. Unlawful Deductions**

12 47. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
13 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
14 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
15 DEFENDANTS violated Labor Code § 221.

16 48. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
17 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
18 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
19 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
20 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
21 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
22 with a rest break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for
23 the rest break. DEFENDANTS' policy caused PLAINTIFF to remain on-call, on-duty and/or on-
24 premises during what was supposed to be his off-duty meal periods. PLAINTIFF therefore
25 forfeited meal and rest breaks without additional compensation and in accordance with
26 DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided
27 PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code § 226. Further,
28 DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to

1 the use of his personal cell phone, on behalf of and in furtherance of his employment with
2 DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum,
3 overtime and double time compensation still owed to him or any penalty wages owed to him
4 under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not
5 exceed the sum or value of \$75,000.

6 **J. CLASS ACTION ALLEGATIONS**

7 49. PLAINTIFF brings the First through Eighth Causes of Action as a class action
8 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
9 previously were employed by Defendant Freeway Insurance Services America and/or Defendant
10 Freeway Insurance Services and/or Defendant Confie Seguros California and/or Defendant
11 Confie Holding and/or Defendant Confie Seguros in California and classified as non-exempt
12 employees, including those who were paid in whole or in part on a commission and/or piece-rate
13 basis (“CALIFORNIA CLASS”) during the period beginning four years prior to the filing of the
14 Complaint and ending on a date determined by the Court (“CLASS PERIOD”).

15 50. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
16 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
17 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
18 illegal meal and rest period policies, failure to reimburse for business expenses, failure to
19 compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure
20 to maintain required records, and interest, statutory and civil penalties, attorney’s fees, costs, and
21 expenses.

22 51. The members of the class are so numerous that joinder of all class members is
23 impractical.

24 52. Common questions of law and fact regarding DEFENDANTS’ conduct, including
25 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to
26 provide legally compliant meal and rest periods, failure to reimburse for business expenses, failure
27 to provide accurate itemized wage statements, and failure to ensure they are paid at least minimum
28 wage and overtime, exist as to all members of the class and predominate over any questions

1 affecting solely any individual members of the class. Among the questions of law and fact
2 common to the class are:

- 3 a. Whether DEFENDANTS maintained legally compliant meal period policies and
4 practices;
- 5 b. Whether DEFENDANTS maintained legally compliant rest period policies and
6 practices;
- 7 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
8 CLASS Members accurate premium payments for missed meal and rest periods;
- 9 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
10 CLASS Members accurate overtime and double time wages;
- 11 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
12 CLASS Members at least minimum wage for all hours worked;
- 13 f. Whether DEFENDANTS failed to compensate PLAINTIFF and the
14 CALIFORNIA CLASS Members for required business expenses;
- 15 g. Whether DEFENDANTS unlawfully deducted earned wages from PLAINTIFF
16 and the CALIFORNIA CLASS Members' pay;
- 17 h. Whether DEFENDANTS issued legally compliant wage statements;
- 18 i. Whether DEFENDANTS committed an act of unfair competition by
19 systematically failing to record and pay PLAINTIFF and the other members of the
20 CALIFORNIA CLASS for all time worked;
- 21 j. Whether DEFENDANTS committed an act of unfair competition by
22 systematically failing to record all meal and rest breaks missed by PLAINTIFF
23 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed
24 the benefit of this work, required employees to perform this work and permits or
25 suffers to permit this work;
- 26 k. Whether DEFENDANTS committed an act of unfair competition in violation of
27 the UCL, by failing to provide the PLAINTIFF and the other members of the
28 CALIFORNIA CLASS with the legally required meal and rest periods.

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

3 54. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
4 the same interests as the other members of the class.

5 55. PLAINTIFF will fairly and adequately represent and protect the interests of the
6 CALIFORNIA CLASS Members.

7 56. PLAINTIFF retained able class counsel with extensive experience in class action
8 litigation.

9 57. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
10 interests of the other CALIFORNIA CLASS Members.

11 58. There is a strong community of interest among PLAINTIFF and the members of
12 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
13 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
14 sustained.

15 59. The questions of law and fact common to the CALIFORNIA CLASS Members
16 predominate over any questions affecting only individual members, including legal and factual
17 issues relating to liability and damages.

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

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

1 including Sections 201, 202, 203, 204, 221, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
2 1198, 2802, for which this Court should issue declaratory and other equitable relief pursuant to
3 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
4 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

21 69. By the conduct alleged herein, DEFENDANT's practices were also unfair and
22 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
23 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
24 as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

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

26 76. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
28 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANT is restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **Failure To Pay Minimum Wages**

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

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

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

12 78. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
13 for DEFENDANT’S willful and intentional violations of the California Labor Code and the
14 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate
15 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

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

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

23 82. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
24 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
25 worked. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and
26 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
27 CALIFORNIA CLASS.

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1 83. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
3 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
4 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

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

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

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **Failure To Pay Overtime Compensation**

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

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

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

27 92. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
28 for DEFENDANT's willful and intentional violations of the California Labor Code and the

1 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
2 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
3 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

14 96. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
15 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
16 they worked, including overtime work.

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

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

3 99. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
4 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
5 compensation for overtime worked.

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

14 101. During the CLASS PERIOD, PLAINTIFF and the other members of the
15 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
16 constituting a failure to pay all earned wages.

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

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

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

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

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

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

4 **FIFTH CAUSE OF ACTION**

5 **Failure To Provide Required Rest Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

23 113. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
24 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
25 who were not provided a rest period, in accordance with the applicable Wage Order, one
26 additional hour of compensation at each employee’s regular rate of pay for each workday that rest
27 period was not provided.
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1 114. As a proximate result of the aforementioned violations, PLAINTIFF and
2 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
3 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

4 **SIXTH CAUSE OF ACTION**

5 **Failure To Provide Accurate Itemized Statements**

6 **(Cal. Lab. Code §§ 226)**

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

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

11 116. Cal. Labor Code § 226 provides that an employer must furnish employees with an
12 “accurate itemized” statement in writing showing:

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

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

3 117. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA
4 CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest
5 period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide
6 PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage
7 statements which failed to show, among other things, the total hours worked and all applicable
8 hourly rates in effect during the pay period and the corresponding amount of time worked at each
9 hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

10 118. In addition to the foregoing, DEFENDANTS failed to provide itemized wage
11 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
12 requirements of California Labor Code Section 226.

13 119. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
14 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
15 CLASS. These damages include, but are not limited to, costs expended calculating the correct
16 wages for all missed meal and rest breaks and the amount of employment taxes which were not
17 properly paid to state and federal tax authorities. These damages are difficult to estimate.
18 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
19 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
20 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
21 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
22 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
23 of the CALIFORNIA CLASS herein).

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

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

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

8 121. Cal. Lab. Code § 200 provides that:

9 As used in this article:

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

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

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

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

29 124. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
30 Members' employment contract.

31 125. Cal. Lab. Code § 203 provides:

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

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

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

10 **EIGHTH CAUSE OF ACTION**

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

12 **(Cal. Lab. Code §§ 2802)**

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

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

17 129. Cal. Lab. Code § 2802 provides, in relevant part, that:

18 An employer shall indemnify his or her employee for all necessary expenditures or losses
19 incurred by the employee in direct consequence of the discharge of his or her duties, or of
20 his or her obedience to the directions of the employer, even though unlawful, unless the
21 employee, at the time of obeying the directions, believed them to be unlawful

22 130. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal.
23 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
24 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
25 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
26 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
27 using their personal cellular phone all on behalf of and for the benefit of DEFENDANTS.
28 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of
DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse

1 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
2 their personal cellular phones for DEFENDANTS within the course and scope of their
3 employment for DEFENDANTS. These expenses were necessary to complete their principal job
4 duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their
5 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
6 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
7 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer
8 is required to do under the laws and regulations of California.

9 131. PLAINTIFF therefore demands reimbursement on behalf of the members of the
10 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
11 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with
12 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

13 **PRAYER FOR RELIEF**

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

16 1. On behalf of the CALIFORNIA CLASS:

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

27 2. On behalf of the CALIFORNIA CLASS:

- 28 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth

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Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

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

3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys’ fees and costs of suit, as allowable under the law.

DATED: March 9, 2022

ZAKAY LAW GROUP, APLC

By:  _____

Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: March 9, 2022

ZAKAY LAW GROUP, APLC

By:  _____

Shani O. Zakay
Attorney for PLAINTIFF