

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

KAISERAIR, INC. a California corporation; and DOES 1 through 50,
Inclusive

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

DEVIN TERRELL, an individual, on behalf of himself, and on behalf of
all persons similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
ALAMEDA COUNTY
SEP 23 2021
JERRIE MOYER
CLERK OF THE COURT
By _____ Deputy

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of Alameda
1225 Fallon Street
Oakland, CA 94612

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

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

RG21113701
CASE NUMBER:
(Número del Caso):

DATE:
(Fecha)

SEP 23 2021

Clerk, by _____
(Secretario)

JERRIE MOYER

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)).

[SEAL]

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

VIA FAX

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15 Attorneys for Plaintiff DEVIN TERRELL

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **IN AND FOR THE COUNTY OF ALAMEDA**

18 **RG21113701**

19 DEVIN TERRELL, an individual, on behalf
20 of himself, and on behalf of all persons
21 similarly situated,

22 Plaintiffs,

23 vs.

24 KAISERAIR, INC. a California corporation;
25 and DOES 1 through 50, Inclusive;

26 Defendants.

27 Case No. _____

28 **CLASS ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN

ENDORSED
FILED
ALAMEDA COUNTY
SEP 23 2021
CLERK OF THE SUPERIOR COURT
By JERRIE MOYER Deputy

VIA FAX



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- VIOLETION OF CAL. LAB. CODE §§ 226 and 226.2;
- 8. FAILURE TO PAY SICK PAY AT THE CORRECT RATE OF PAY IN VIOLATION OF CAL. LAB. CODE § 246, *et seq.*;
- 9. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203;
- 10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *ET SEQ.*]

DEMAND FOR JURY TRIAL

Plaintiff DEVIN TERRELL (“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 KAISERAIR, INC. (“DEFENDANT” and/or “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of Alameda, and provides aircraft management services.

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

3. The agents, servants and/or employees of the DEFENDANTS and each of them acting on behalf of the 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
2 herein on behalf of the DEFENDANTS with respect to the conduct alleged herein. Consequently, the
3 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are
4 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
5 proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

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

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

16 6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on an
17 hourly basis and entitled to minimum wages, overtime pay, and legally compliant meal and rest periods
18 from December 2016 to March 2021.

19 7. PLAINTIFF brings this Class Action under California Code of Civil Procedure § 382 on
20 behalf of himself and on behalf of all of DEFENDANTS current and former non-exempt California
21 employees (the "CALIFORNIA CLASS") at any time during the period beginning four years from the
22 date of the filing of this Complaint and ending on a date determined by the Court (the "CLASS
23 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS members is
24 under five million dollars (\$5,000,000.00). PLAINTIFF reserves the right to amend the following class
25 definitions before the Court determines whether class certification is appropriate, or thereafter upon
26 leave of Court:

27 8. PLAINTIFF brings this Class Action on behalf of himself and on behalf of the
28 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses

1 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which
2 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest
3 periods or an additional hour of pay at the regular rate of compensation in lieu thereof in violation of
4 California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission
5 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in
6 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to
7 provide accurate itemized wage statements in violation of California Labor Code Sections 226 and
8 226.2.

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

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

16 **JURISDICTION AND VENUE**

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

21 12. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
22 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, and DEFENDANTS
23 (i) currently maintain and at all relevant times, maintained offices and facilities in this County and/or
24 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged
25 in this County against members of the CALIFORNIA CLASS.

26 **THE CONDUCT**

27 13. In violation of the applicable sections of the California Labor Code and the requirements
28 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company



1 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
2 compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members
3 of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other
4 members of the CALIFORNIA CLASS for all time worked, failed to pay PLAINTIFF and the other
5 members of the CALIFORNIA CLASS sick pay at the regular rate, and failed to issue to PLAINTIFF
6 and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing,
7 among other things, all applicable hourly rates in effect during the pay periods and the corresponding
8 amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are
9 intended to purposefully avoid the accurate and full payment for all time worked as required by
10 California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over
11 competitors who comply with the law. To the extent equitable tolling operates to toll claims by the
12 CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

13 **A. Meal Period Violations**

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



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

14 **B. Rest Period Violations**

15 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
16 CLASS members were also required from time to time to work in excess of four (4) hours without
17 being provided ten (10) minute rest periods as a result of their rigorous work schedules, and
18 DEFENDANTS' inadequate staffing. Further, for the same reasons these employees were denied their
19 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
20 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
21 between six (6) and eight (8) hours from time to time, and a first, second, and third rest period of at
22 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. As a result
23 of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other
24 CALIFORNIA CLASS members were from time to time denied their proper rest periods by
25 DEFENDANTS and DEFENDANTS' managers.

26 **C. Regular Rate Violation – Overtime and Sick Pay**

27 17. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to
28 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for



1 their overtime hours worked and sick pay. As a result, PLAINTIFF and the other CALIFORNIA
2 CLASS members forfeited wages due to them for working overtime without compensation at the
3 correct overtime and sick pay rates. DEFENDANTS' uniform policy and practice to not pay the
4 CALIFORNIA CLASS members the correct overtime rate for all overtime worked and sick pay in
5 accordance with applicable law is evidenced by DEFENDANTS' business records.

6 18. State law provides that employees must be paid overtime at one-and-one-half times their
7 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at
8 an hourly rate plus bonuses that was tied to how much money the company makes per year in sales.

9 19. DEFENDANTS' non-discretionary bonus program provided the CALIFORNIA CLASS,
10 including PLAINTIFF, with bonus compensation when the company met the various performance
11 goals set by DEFENDANT. However, when calculating the regular rate of pay, in those pay periods
12 where PLAINTIFF and the CALIFORNIA CLASS worked overtime and earned non-discretionary
13 bonus compensation, DEFENDANT failed to accurately include the non-discretionary bonus
14 compensation as part of the employees' "regular rate of pay."

15 20. In other instances, when calculating the regular rate of pay, in those pay periods where
16 PLAINTIFF and the CALIFORNIA CLASS worked overtime and earned this non-discretionary bonus,
17 DEFENDANT failed to (1) accurately include the non-discretionary bonus compensation into the
18 regular rate of pay and/or (2) calculated all hours worked rather than just all non-overtime hours worked
19 into the regular rate of pay in violation of *Alvarado v. Dart* (2018) 4 Cal.5th 542.

20 21. As a matter of law, the incentive and commission compensation received by PLAINTIFFS
21 and other CALIFORNIA CLASS members must be included and correctly calculated into the "regular
22 rate of pay" for purposes of overtime compensation and sick pay. DEFENDANTS' failure to do so has
23 resulted in DEFENDANTS' systematic underpayment of overtime compensation and sick pay to
24 PLAINTIFF and other CALIFORNIA CLASS members. Specifically, California Labor Code Section
25 246 mandates that paid sick time for non-employees shall be calculated in the same manner as the
26 regular rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether
27 or not the employee actually works overtime in that workweek. DEFENDANTS' conduct, as articulated
28 herein, by failing to include the incentive compensation as part of the "regular rate of pay" for purposes



1 of sick pay compensation was in violation of Cal. Lab. Code § 246.

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

11 **D. Unreimbursed Business Expenses**

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

22 24. From time-to-time during the CLASS PERIOD, PLAINTIFF and the members of the
23 CALIFORNIA CLASS were required by DEFENDANTS to use their own personal cellular phones
24 and personal vehicles as a result of and in furtherance of their job duties as employees for
25 DEFENDANTS. But for the use of their personal cell phones and personal vehicles, PLAINTIFF and
26 the members of the CALIFORNIA CLASS could not complete their essential job duties.
27 Notwithstanding, DEFENDANTS did not reimburse or indemnify PLAINTIFF or the members of the
28 CALIFORNIA CLASS for the cost associated with the use of their personal cellular phones and

1 personal vehicles for DEFENDANTS' benefit. As a result, in the course of their employment with
2 DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS incurred unreimbursed
3 business expenses which included, but were not limited to, costs related to the use of their personal
4 cellular phones, gas and associated vehicle expenses, all on behalf of and for the benefit of
5 DEFENDANTS.

6 **E. Wage Statement Violations**

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

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

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

28 ///



1 **F. CLASS ACTION ALLEGATIONS**

2 28. PLAINTIFF brings the First through Ninth Causes of Action as a class action pursuant to
3 California Code of Civil Procedure § 382 on behalf the CALIFORNIA CLASS, defined *supra*, that
4 worked for DEFENDANT in California at any time beginning four (4) years prior to the filing of this
5 Complaint and ending on the date as determined by the Court (“CLASS PERIOD”).

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

12 30. The members of the class are so numerous that joinder of all class members is impractical.

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

21 a. Whether DEFENDANTS maintained legally compliant meal period
22 policies and practices;

23 b. Whether DEFENDANTS maintained legally compliant rest period
24 policies and practices;

25 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
26 CALIFORNIA CLASS members accurate premium payments for missed
27 meal and rest periods;

28 d. Whether DEFENDANTS failed to pay PLAINTIFF and the

- 1 CALIFORNIA CLASS members accurate overtime wages and sick pay;
- 2 e. Whether DEFENDANTS failed to pay PLAINTIFF and the
- 3 CALIFORNIA CLASS members at least minimum wage for all hours
- 4 worked;
- 5 f. Whether DEFENDANTS issued legally compliant wage statements;
- 6 g. Whether DEFENDANTS committed an act of unfair competition by
- 7 systematically failing to record and pay PLAINTIFF and the other members
- 8 of the CALIFORNIA CLASS for all time worked;
- 9 h. Whether DEFENDANTS committed an act of unfair competition by
- 10 systematically failing to record all meal and rest breaks missed by
- 11 PLAINTIFF and other CALIFORNIA CLASS members, even though
- 12 DEFENDANTS enjoyed the benefit of this work, required employees to
- 13 perform this work and permits or suffers to permit this work;
- 14 i. Whether DEFENDANTS committed an act of unfair competition in
- 15 violation of the UCL, by failing to provide the PLAINTIFF and the other
- 16 members of the CALIFORNIA CLASS with the legally required meal and
- 17 rest periods; and,

18 32. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result

19 of DEFENDANTS' conduct and actions alleged herein.

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

21 interests as the other members of the class.

22 34. PLAINTIFF will fairly and adequately represent and protect the interests of the

23 CALIFORNIA CLASS members.

24 35. PLAINTIFF retained able class counsel with extensive experience in class action

25 litigation.

26 36. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests

27 of the other CALIFORNIA CLASS members.

28 37. There is a strong community of interest among PLAINTIFF and the members of the

1 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient
2 to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

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

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

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

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

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

23 **FIRST CAUSE OF ACTION**

24 **For Unlawful Business Practices**

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

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

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

1 42. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
2 17021.

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

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

14 Cal. Bus. & Prof. Code § 17203.

15 44. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
16 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
17 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
18 “UCL”), by engaging and continuing to engage in business practices which violates California law,
19 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
20 and the California Labor Code including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1194,
21 1197, 1197.1, 1198, & 2802, for which this Court should issue declaratory and other equitable relief
22 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
23 held to constitute unfair competition, including restitution of wages wrongfully withheld.

24 45. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that
25 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or
26 substantially injurious to employees, and were without valid justification or utility for which this Court
27 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
28 Professions Code, including restitution of wages wrongfully withheld.

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

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

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

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

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

25 51. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
26 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
27 calculated overtime and missed meal and rest periods premiums.

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



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

6 53. 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 54. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,
12 seek such relief as may be necessary to restore to them the money and property which DEFENDANTS
13 has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been
14 deprived, by means of the above described unlawful and unfair business practices, including earned but
15 unpaid wages for all overtime worked.

16 55. 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 DEFENDANTS from engaging in any unlawful and
19 unfair business practices in the future.

20 56. 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 DEFENDANTS. 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 DEFENDANTS is restrained from continuing to engage in these unlawful and unfair
26 business practices.

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1 **SECOND CAUSE OF ACTION**

2 **For Failure to Pay Overtime Compensation**

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

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

5 57. 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 58. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period
8 beginning four years prior to the filing of the Complaint and the present (“LABOR CLASS PERIOD”)
9 bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and
10 the Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these employees
11 for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
12 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

1 **THIRD 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 CLASS and Against All DEFENDANTS)**

5 73. 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 74. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
8 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
9 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
10 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the
11 LABOR CLASS PERIOD.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

13 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

13 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

9 **SIXTH CAUSE OF ACTION**

10 **For Failure to Reimburse Employees for Required Expenses**

11 **[Cal. Lab. Code § 2802]**

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

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

15 96. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

1 duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not
2 reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
3 their personal cellular phones and personal vehicles for DEFENDANTS within the course and scope of
4 their employment for DEFENDANTS. These expenses were necessary to complete their principal job
5 duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their
6 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
7 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse PLAINTIFF
8 and the members of the CALIFORNIA CLASS for these expenses as an employer is required to do under
9 the laws and regulations of California.

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

14 **SEVENTH 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 CLASS and Against All DEFENDANTS)**

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

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

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



- 1 4. All deductions, provided that all deductions made on written orders
- 2 of the employee may be aggregated and shown as one item;
- 3 5. Net wages earned;
- 4 6. The inclusive dates of the period for which the employee is paid;
- 5 7. The name of the employee and his or her social security number,
- 6 except that by January 1, 2008, only the last four digits of his or her social
- 7 security number or an employee identification number other than a social
- 8 security number may be shown on the itemized statement;
- 9 8. The name and address of the legal entity that is the employer; and
- 10 9. All applicable hourly rates in effect during the pay period and the
- 11 corresponding number of hours worked at each hourly rate by the employee.

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

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

1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO PAY SICK PAY AT THE CORRECT RATE OF PAY**

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

4 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all DEFENDANT)**

5 103. 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.

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

11 105. From time-to-time, during the PLAINTIFF and other members of the CALIFORNIA
12 CLASS were compensated at an hourly rate plus bonuses. As a matter of law, the bonus compensation
13 received by PLAINTIFF and other members of the CALIFORNIA CLASS must be included in the
14 “regular rate of pay.”

15 106. From time-to-time during the CLASS PERIOD, in those pay periods where PLAINTIFF
16 and other members of the CALIFORNIA LABOR SUB-CLASS earned hourly compensation and either
17 non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to properly
18 calculate the regular rate of pay for purposes of compensating paid sick time by omitting non-
19 discretionary incentive pay from the regular rate of pay.

20 107. DEFENDANT’s uniform policy and practice of omitting non-discretionary bonuses from
21 the regular rate of pay for purposes of paying paid sick pay, resulted in the underpayment of sick pay
22 wages to PLAINTIFF and other members of the CALIFORNIA CLASS. PLAINTIFF and other
23 members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, including sick
24 pay wages, according to proof, interest, statutory costs, as well as the assessment of any statutory
25 penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other
26 applicable statutes. To the extent sick pay is determined to be owed to other members of the
27 CALIFORNIA LABOR SUB-CLASS who have terminated their employment, DEFENDANT’s
28 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled

1 to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of
2 other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT’S conduct as alleged
3 herein was willful, intentional and not in good faith. Further, PLAINTIFF and other members of the
4 CALIFORNIA CLASS are entitled to seek and recover statutory costs.

5 **NINTH CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES WHEN DUE**

7 **(Cal Lab. Code §§ 201, 202, 203)**

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

9 108. 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 Complaint.

11 109. Cal. Lab. Code § 200 provides that:

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

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

22 111. Cal. Lab. Code § 202 provides, in relevant part, that:

23 If an employee not having a written contract for a definite period
24 quits his or her employment, his or her wages shall become due and
25 payable not later than 72 hours thereafter, unless the employee has
26 given 72 hours previous notice of his or her intention to quit, in
27 which case the employee is entitled to his or her wages at the time
28 of quitting. Notwithstanding any other provision of law, an

1 employee who quits without providing a 72-hour notice shall be
2 entitled to receive payment by mail if he or she so requests and
3 designates a mailing address. The date of the mailing shall constitute
4 the date of payment for purposes of the requirement to provide
5 payment within 72 hours of the notice of quitting.

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

8 113. Cal. Lab. Code § 203 provides:

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

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

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

23 **TENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

23 120. The policies, acts and practices heretofore described were and are an unlawful business
24 act or practice because DEFENDANTS (a) failed to properly record and pay PLAINTIFF and the other
25 AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime hours in violation
26 of the Wage Order, (b) failed to provide accurate itemized wage statements, (c) failed to provide
27 mandatory meal breaks and rest breaks, and (d) failed to timely pay wages, all in violation of the
28 applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code

1 §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d),
2 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, and the applicable Industrial Wage
3 Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby
4 seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
5 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
6 the other AGGRIEVED EMPLOYEES.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANT, jointly and
9 severally, as follows:

10 1. On behalf of the CALIFORNIA CLASS:

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

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

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

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

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

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

27 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
28 which a violation occurs and one hundred dollars (\$100) per each member of the



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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;

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

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

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

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

3. On all claims:

- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys’ fees and cost of suit, as allowable under the law,

including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

Dated: September 22, 2021

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

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

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

Dated: September 22, 2021

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

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #39701

July 19, 2021

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

<p>Labor & Workforce Development Agency Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, CA 94612 PAGA@dir.ca.gov <i>Via Online Submission</i></p>	<p>KAISERAIR, INC. c/o RONALD J GUERRA 8735 EARHART RD OAKLAND CA 94621 <i>Via Certified Mail with Return Receipt</i> <i>No. 7021 0950 0001 6369 9781</i></p>
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Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff DEVIN TERRELL (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against KAISERAIR, INC. (“Defendant”). Plaintiff was employed by Defendant in California between December 2016 to March 2021 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

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

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

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

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

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a long horizontal flourish extending to the right.

Shani O. Zakay
Attorney for Plaintiff

1 JEAN-CLAUDE LAPUYADE (SBN 248676)

2 JLAPUYADE@JCL-LAWFIRM.COM

3 **JCL LAW FIRM, APC**

4 3990 OLD TOWN AVENUE, SUITE C204

5 SAN DIEGO, CA 92110

6 TEL: (619) 599-8292

7 FAX: (619) 599-8291

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9 **ZAKAY LAW GROUP, APLC**

10 3990 OLD TOWN AVENUE, SUITE C204

11 SAN DIEGO, CA 92110

12 TEL: (619) 255-9047

13 FAX: (619) 404-9203

14 ATTORNEYS FOR PLAINTIFF

15 **SUPERIOR COURT OF CALIFORNIA**
16 **COUNTY OF ALAMEDA**

17 DEVIN TERRELL, an individual, on behalf of
18 himself, and on behalf of all persons similarly
19 situated,

20 Plaintiffs,

21 vs.

22 KAISERAIR, INC. a California corporation;
23 and DOES 1 through 50, Inclusive;

24 DEFENDANTS.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§ 226 and 226.2;
8. FAILURE TO PAY SICK PAY AT THE CORRECT RATE OF PAY IN VIOLATION OF CAL. LAB. CODE § 246, *et seq.*;
9. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203.

DEMAND FOR JURY TRIAL

1
2 Plaintiff DEVIN TERRELL (“PLAINTIFF”) an individual, on behalf of himself and all other
3 similarly situated current and former employees alleges on information and belief, except for his own
4 acts and knowledge which are based on personal knowledge, the following:

5 **THE PARTIES**

6 1. Defendant KAISERAIR, INC. (“DEFENDANT” and/or “DEFENDANTS”) is a
7 California corporation that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California, county of Alameda, and provides aircraft management
9 services.

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

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

26 4. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
27 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused
28



1 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
2 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
3 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

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

9 6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on an
10 hourly basis and entitled to minimum wages, overtime pay, and legally compliant meal and rest periods
11 from December 2016 to March 2021.

12 7. PLAINTIFF brings this Class Action under California Code of Civil Procedure § 382 on
13 behalf of himself and on behalf of all of DEFENDANTS current and former non-exempt California
14 employees (the “CALIFORNIA CLASS”) at any time during the period beginning four years from the
15 date of the filing of this Complaint and ending on a date determined by the Court (the “CLASS
16 PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS members is
17 under five million dollars (\$5,000,000.00). PLAINTIFF reserves the right to amend the following class
18 definitions before the Court determines whether class certification is appropriate, or thereafter upon
19 leave of Court:

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



1 provide accurate itemized wage statements in violation of California Labor Code Sections 226 and
2 226.2.

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

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

10 **JURISDICTION AND VENUE**

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

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

20 **THE CONDUCT**

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



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

7 **A. Meal Period Violations**

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

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



1 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-
2 duty meal period for some workdays in which these employees were required by DEFENDANTS to
3 work ten (10) hours of work from time to time. The nature of the work performed by the PLAINTIFF
4 and the members of the CALIFORNIA CLASS does not qualify for limited and narrowly construed
5 “on-duty” meal period exception. PLAINTIFF and other members of the CALIFORNIA CLASS
6 therefore forfeited meal breaks without additional compensation and in accordance with
7 DEFENDANTS’ strict corporate policy and practice.

8 **B. Rest Period Violations**

9 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
10 CLASS members were also required from time to time to work in excess of four (4) hours without
11 being provided ten (10) minute rest periods as a result of their rigorous work schedules, and
12 DEFENDANTS’ inadequate staffing. Further, for the same reasons these employees were denied their
13 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
14 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
15 between six (6) and eight (8) hours from time to time, and a first, second, and third rest period of at
16 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. As a result
17 of their rigorous work schedules and DEFENDANTS’ inadequate staffing, PLAINTIFF and other
18 CALIFORNIA CLASS members were from time to time denied their proper rest periods by
19 DEFENDANTS and DEFENDANTS’ managers.

20 **C. Regular Rate Violation – Overtime and Sick Pay**

21 17. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to
22 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for
23 their overtime hours worked and sick pay. As a result, PLAINTIFF and the other CALIFORNIA
24 CLASS members forfeited wages due to them for working overtime without compensation at the
25 correct overtime and sick pay rates. DEFENDANTS’ uniform policy and practice to not pay the
26 CALIFORNIA CLASS members the correct overtime rate for all overtime worked and sick pay in
27 accordance with applicable law is evidenced by DEFENDANTS’ business records.



1 18. State law provides that employees must be paid overtime at one-and-one-half times their
2 “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS members were compensated at
3 an hourly rate plus bonuses that was tied to how much money the company makes per year in sales.

4 19. DEFENDANTS’ non-discretionary bonus program provided the CALIFORNIA CLASS,
5 including PLAINTIFF, with bonus compensation when the company met the various performance
6 goals set by DEFENDANT. However, when calculating the regular rate of pay, in those pay periods
7 where PLAINTIFF and the CALIFORNIA CLASS worked overtime and earned non-discretionary
8 bonus compensation, DEFENDANT failed to accurately include the non-discretionary bonus
9 compensation as part of the employees’ “regular rate of pay.”

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

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

25 22. In violation of the applicable sections of the California Labor Code and the requirements
26 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
27 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
28 other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime worked and sick



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

6 **D. Unreimbursed Business Expenses**

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

17 24. From time-to-time during the CLASS PERIOD, PLAINTIFF and the members of the
18 CALIFORNIA CLASS were required by DEFENDANTS to use their own personal cellular phones
19 and personal vehicles as a result of and in furtherance of their job duties as employees for
20 DEFENDANTS. But for the use of their personal cell phones and personal vehicles, PLAINTIFF and
21 the members of the CALIFORNIA CLASS could not complete their essential job duties.
22 Notwithstanding, DEFENDANTS did not reimburse or indemnify PLAINTIFF or the members of the
23 CALIFORNIA CLASS for the cost associated with the use of their personal cellular phones and
24 personal vehicles for DEFENDANTS' benefit. As a result, in the course of their employment with
25 DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS incurred unreimbursed
26 business expenses which included, but were not limited to, costs related to the use of their personal
27 cellular phones, gas and associated vehicle expenses, all on behalf of and for the benefit of
28 DEFENDANTS.

1 **E. Wage Statement Violations**

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

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

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

23 **F. CLASS ACTION ALLEGATIONS**

24 28. PLAINTIFF brings the First through Ninth Causes of Action as a class action pursuant to
25 California Code of Civil Procedure § 382 on behalf the CALIFORNIA CLASS, defined *supra*, that
26 worked for DEFENDANT in California at any time beginning four (4) years prior to the filing of this
27 Complaint and ending on the date as determined by the Court ("CLASS PERIOD").

28 29. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been

1 deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid
2 minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal
3 and rest period policies, failure to separately compensate rest periods, failure to separately compensate
4 for all non-productive time, failure to provide accurate itemized wage statements, failure to maintain
5 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

6 30. The members of the class are so numerous that joinder of all class members is impractical.

7 31. Common questions of law and fact regarding DEFENDANTS' conduct, including but not
8 limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate
9 the regular rate of pay for overtime and sick pay compensation, failure to accurately calculate the regular
10 rate of compensation for missed meal and rest period premiums, failing to provide legally compliant
11 meal and rest periods, failure to provide accurate itemized wage statements accurate, and failure ensure
12 they are paid at least minimum wage and overtime, exist as to all members of the class and predominate
13 over any questions affecting solely any individual members of the class. Among the questions of law
14 and fact common to the class are:

15 a. Whether DEFENDANTS maintained legally compliant meal period
16 policies and practices;

17 b. Whether DEFENDANTS maintained legally compliant rest period
18 policies and practices;

19 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
20 CALIFORNIA CLASS members accurate premium payments for missed
21 meal and rest periods;

22 d. Whether DEFENDANTS failed to pay PLAINTIFF and the
23 CALIFORNIA CLASS members accurate overtime wages and sick pay;

24 e. Whether DEFENDANTS failed to pay PLAINTIFF and the
25 CALIFORNIA CLASS members at least minimum wage for all hours
26 worked;

27 f. Whether DEFENDANTS issued legally compliant wage statements;

28 g. Whether DEFENDANTS committed an act of unfair competition by

1 systematically failing to record and pay PLAINTIFF and the other members
2 of the CALIFORNIA CLASS for all time worked;

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

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

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

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

16 34. PLAINTIFF will fairly and adequately represent and protect the interests of the
17 CALIFORNIA CLASS members.

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

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

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

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

28 39. A class action is superior to other available methods for the fair and efficient adjudication

1 of this controversy because joinder of all class members is impractical. Moreover, since the damages
2 suffered by individual members of the class may be relatively small, the expense and burden of
3 individual litigation makes it practically impossible for the members of the class individually to redress
4 the wrongs done to them. Without class certification and determination of declaratory, injunctive,
5 statutory and other legal questions within the class format, prosecution of separate actions by individual
6 members of the CALIFORNIA CLASS will create the risk of:

- 7 a. Inconsistent or varying adjudications with respect to individual members of the
8 CALIFORNIA CLASS which would establish incompatible standards of conduct for the
9 parties opposing the CALIFORNIA CLASS; and/or,
10 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
11 which would as a practical matter be dispositive of the interests of the other members not
12 party to the adjudication or substantially impair or impeded their ability to protect their
13 interests.

14 40. Class treatment provides manageable judicial treatment calculated to bring an efficient
15 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of
16 DEFENDANTS.

17 **FIRST CAUSE OF ACTION**

18 **For Unlawful Business Practices**

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

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

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

23 42. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
24 17021.

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

28 Any person who engages, has engaged, or proposes to engage in unfair

1 competition may be enjoined in any court of competent jurisdiction. The
2 court may make such orders or judgments, including the appointment of a
3 receiver, as may be necessary to prevent the use or employment by any
4 person of any practice which constitutes unfair competition, as defined in
5 this chapter, or as may be necessary to restore to any person in interest any
6 money or property, real or personal, which may have been acquired by
7 means of such unfair competition.

8 Cal. Bus. & Prof. Code § 17203.

9 44. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
10 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
11 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
12 “UCL”), by engaging and continuing to engage in business practices which violates California law,
13 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
14 and the California Labor Code including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1194,
15 1197, 1197.1, 1198, & 2802, for which this Court should issue declaratory and other equitable relief
16 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
17 held to constitute unfair competition, including restitution of wages wrongfully withheld.

18 45. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that
19 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or
20 substantially injurious to employees, and were without valid justification or utility for which this Court
21 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
22 Professions Code, including restitution of wages wrongfully withheld.

23 46. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and fraudulent
24 in that DEFENDANTS’ uniform policy and practice failed to, *inter alia*, provide the legally mandated
25 meal and rest periods, the required accurate amount of compensation for missed meal and rest periods,
26 overtime and minimum wages owed, provide accurate itemized wage statements, due to a systematic
27 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
28 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this

1 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
2 restitution of wages wrongfully withheld.

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

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

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

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

19 51. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
20 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
21 calculated overtime and missed meal and rest periods premiums.

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

28 53. All the acts described herein as violations of, among other things, the Industrial Welfare

1 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were
2 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were
3 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
4 Bus. & Prof. Code §§ 17200, *et seq.*

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

10 55. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
11 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
12 that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and
13 unfair business practices in the future.

14 56. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
15 and/or adequate remedy at law that will end the unlawful and unfair business practices of
16 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result
17 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of
18 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic
19 harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair
20 business practices.

21 **SECOND CAUSE OF ACTION**

22 **For Failure to Pay Overtime Compensation**

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

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

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

27 58. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period
28 beginning four years prior to the filing of the Complaint and the present (“LABOR CLASS PERIOD”)

1 bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and
2 the Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees
3 for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
4 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

14 62. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
15 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they
16 worked or were not accurately compensated for all overtime hours worked.

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

24 64. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
25 calculated the amount of overtime worked and the applicable overtime rates and consequently underpaid
26 the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS.
27 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
28 in violation of the California Labor Code, the Industrial Welfare Commission requirements and other

1 applicable laws and regulations.

2 65. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
3 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for
4 all overtime worked.

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

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

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

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

26 70. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
27 the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANTS
28 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay

1 employees for their labor as a matter of uniform company policy, practice and procedure, and
2 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
3 members of the CALIFORNIA CLASS for overtime worked.

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

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

21 **THIRD CAUSE OF ACTION**

22 **For Failure to Pay Minimum Wages**

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

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

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

27 74. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
28 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial

1 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
2 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the
3 LABOR CLASS PERIOD.

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

6 76. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
7 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
8 minimum so fixed is unlawful.

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

11 78. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
12 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
13 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
14 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
15 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to
16 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members
17 of the CALIFORNIA CLASS.

18 79. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
19 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
20 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
21 of the CALIFORNIA CLASS in regard to minimum wage pay.

22 80. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
23 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF
24 and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid
25 the payment of all earned wages, and other benefits in violation of the California Labor Code, the
26 Industrial Welfare Commission requirements and other applicable laws and regulations.

27 81. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
28 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum

1 wage compensation for their time worked for DEFENDANTS.

2 82. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the
3 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure
4 to pay all earned wages.

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

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

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

23 86. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
24 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of
25 any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code
26 and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed
27 to the CALIFORNIA CLASS members who have terminated their employment, DEFENDANTS'
28 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled

1 to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of
2 these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein was willful,
3 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS members are
4 entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code §§ 226.7 & 512]**

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

9 87. 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 Complaint.

11 88. During the LABOR CLASS PERIOD, from time to time, DEFENDANTS failed to
12 provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA
13 CLASS members as required by the applicable Wage Order and Labor Code. The nature of the work
14 performed by PLAINTIFF and CALIFORNIA CLASS members did not prevent these employees from
15 being relieved of all of their duties for the legally required off-duty meal periods. As a result of their
16 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were from time to
17 time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally,
18 DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS members with legally
19 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business
20 records from time to time. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA
21 CLASS members with a second off-duty meal period in some workdays in which these employees were
22 required by DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members
23 of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
24 accordance with DEFENDANTS' strict corporate policy and practice.

25 89. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable IWC
26 Wage Order by failing to compensate PLAINTIFF and non-exempt CALIFORNIA CLASS Members
27 who were not provided a meal period, in accordance with the applicable Wage Order, one additional
28 hour of compensation at each employee's regular rate of compensation for each workday that a meal

1 period was not provided.

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

5 **FIFTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code §§ 226.7 & 512]**

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

9 91. PLAINTIFF, and the non-exempt members of the CALIFORNIA CLASS, reallege and
10 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

11 92. During the LABOR CLASS PERIOD, PLAINTIFF and other non-exempt CALIFORNIA
12 CLASS Members were from time to time required to work in excess of four (4) hours without being
13 provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of
14 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second
15 rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,
16 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
17 hours or more from time to time. PLAINTIFF and other non-exempt CALIFORNIA CLASS Members
18 were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules,
19 PLAINTIFF and other non-exempt CALIFORNIA CLASS Members were periodically denied their
20 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

21 93. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC
22 Wage Order by failing to compensate PLAINTIFF and non-exempt CALIFORNIA CLASS Members
23 who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour
24 of compensation at each employee's regular rate of compensation for each workday that rest period was
25 not provided.

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

1 **SIXTH CAUSE OF ACTION**

2 **For Failure to Reimburse Employees for Required Expenses**

3 **[Cal. Lab. Code § 2802]**

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

5 95. 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 96. Cal. Lab. Code § 2802 provides, in relevant part, that:

8 An employer shall indemnify his or her employee for all necessary expenditures or
9 losses incurred by the employee in direct consequence of the discharge of his or her
10 duties, or of his or her obedience to the directions of the employer, even though
11 unlawful, unless the employee, at the time of obeying the directions, believed them
12 to be unlawful.

13 97. From time-to-time during the LABOR CLASS PERIOD, DEFENDANTS violated Cal.
14 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
15 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
16 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of the
17 CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using their
18 personal cellular phone and personal vehicle all on behalf of and for the benefit of DEFENDANTS.
19 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
20 DEFENDANTS to use their personal cell phones and personal vehicles to execute their essential job
21 duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not
22 reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
23 their personal cellular phones and personal vehicles for DEFENDANTS within the course and scope of
24 their employment for DEFENDANTS. These expenses were necessary to complete their principal job
25 duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their
26 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
27 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse PLAINTIFF
28 and the members of the CALIFORNIA CLASS for these expenses as an employer is required to do under

1 the laws and regulations of California.

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

6 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

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



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- 8. The name and address of the legal entity that is the employer; and
- 9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

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

EIGHTH CAUSE OF ACTION

FAILURE TO PAY SICK PAY AT THE CORRECT RATE OF PAY

(Cal. Lab. Code § 246, et seq.)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all DEFENDANT)

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

104. Cal. Labor Code Sections 246(l)(1) mandates that “[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which

1 the employee uses paid sick time, whether or not the employee actually works overtime in that
2 workweek.”

3 105. From time-to-time, during the PLAINTIFF and other members of the CALIFORNIA
4 CLASS were compensated at an hourly rate plus bonuses. As a matter of law, the bonus compensation
5 received by PLAINTIFF and other members of the CALIFORNIA CLASS must be included in the
6 “regular rate of pay.”

7 106. From time-to-time during the CLASS PERIOD, in those pay periods where PLAINTIFF
8 and other members of the CALIFORNIA LABOR SUB-CLASS earned hourly compensation and either
9 non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to properly
10 calculate the regular rate of pay for purposes of compensating paid sick time by omitting non-
11 discretionary incentive pay from the regular rate of pay.

12 107. DEFENDANT’s uniform policy and practice of omitting non-discretionary bonuses from
13 the regular rate of pay for purposes of paying paid sick pay, resulted in the underpayment of sick pay
14 wages to PLAINTIFF and other members of the CALIFORNIA CLASS. PLAINTIFF and other
15 members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, including sick
16 pay wages, according to proof, interest, statutory costs, as well as the assessment of any statutory
17 penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other
18 applicable statutes. To the extent sick pay is determined to be owed to other members of the
19 CALIFORNIA LABOR SUB-CLASS who have terminated their employment, DEFENDANT’s
20 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled
21 to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of
22 other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT’S conduct as alleged
23 herein was willful, intentional and not in good faith. Further, PLAINTIFF and other members of the
24 CALIFORNIA CLASS are entitled to seek and recover statutory costs.

25 **NINTH CAUSE OF ACTION**

26 **FAILURE TO PAY WAGES WHEN DUE**

27 **(Cal Lab. Code §§ 201, 202, 203)**

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

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

3 109. Cal. Lab. Code § 200 provides that:

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

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

14 111. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

28 113. Cal. Lab. Code § 203 provides:

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

7 114. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated,
8 and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest
9 breaks, as required by law.

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

15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANT, jointly and
17 severally, as follows:

18 1. On behalf of the CALIFORNIA CLASS:

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

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

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

25 D) Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund for
26 restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFF and to the other
27 members of the CALIFORNIA CLASS; and,
28

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

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

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

13 3. Meal and rest period compensation pursuant to California Labor Code Sections
14 226.7, 512 and the applicable IWC Wage Order; and

15 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
16 1197.

17 2. On all claims:

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


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

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

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1 Dated: July 19, 2021

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


3 By: 
4 Jean-Claude Lapuyade
5 Attorneys for PLAINTIFF

6 **DEMAND FOR JURY TRIAL**

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

9 Dated: July 19, 2021

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

11 By: 
12 Jean-Claude Lapuyade
13 Attorneys for PLAINTIFF

EXHIBIT

