



SHORT TITLE: Snow v. Lee's Sandwich Corporation, et al.	CASE NUMBER:
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**INSTRUCTIONS FOR USE**

- ➔ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- ➔ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
  Defendant
  Cross-Complainant
  Cross-Defendant

LEE'S SANDWICHES NCA, INC., a California corporation; and DOES 1-50, Inclusive,

Page \_\_\_\_\_ of \_\_\_\_\_

Page 1 of 1

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20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

21 **IN AND FOR THE COUNTY OF SANTA CLARA**

22 WALADIN SNOW, an individual, on behalf of  
23 himself, and on behalf of all persons similarly  
24 situated,

25 Plaintiffs,

26 v.

27 LEE'S SANDWICH CORPORATION, a  
28 California corporation; LEE'S SANDWICHES  
INTERNATIONAL, INC., a California  
corporation; LEE'S SANDWICHES NCA,  
INC., a California corporation; and DOES 1-50,  
Inclusive,

Defendants.

E-FILED  
1/31/2023 1:29 PM  
Clerk of Court  
Superior Court of CA,  
County of Santa Clara  
23CV410621  
Reviewed By: R. Walker

Case No: **23CV410621**

**CLASS ACTION COMPLAINT FOR:**

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

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- 6) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
  - 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
  - 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802.

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**DEMAND FOR A JURY TRIAL**

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PLAINTIFF WALADIN SNOW (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees, allege on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

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**PRELIMINARY ALLEGATIONS**

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1. Defendant LEE’S SANDWICH CORPORATION (“Defendant Lee’s Sandwich Corporation”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant LEE’S SANDWICHES INTERNATIONAL, INC. (“Defendant Lee’s International”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant LEE’S SANDWICHES NCA, INC. (“Defendant Lee’s Sandwiches NCA”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

4. Defendant Lee’s Sandwich Corporation, Defendant Lee’s Sandwich International and Defendant Lee’s Sandwiches NCA were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

5. DEFENDANT operates restaurants throughout the state of California, including in the county of Santa Clara, where PLAINTIFF worked.

1           6.     PLAINTIFF was employed by DEFENDANTS in California from December of  
2 2021 to March of 2022 as a non-exempt employee, paid on an hourly basis and entitled to the  
3 legally required meal and rest periods and payment of minimum and overtime wages due for all  
4 time worked.

5           7.     PLAINTIFF brings this Class Action on behalf of himself and a California class,  
6 defined as all persons who are or previously were employed by Defendant Lee's Sandwich  
7 Corporation and/or Defendant Lee's Sandwich International and/or Defendant Lee's Sandwiches  
8 NCA in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any  
9 time during the period beginning four (4) years prior to the filing of this Complaint and ending on  
10 the date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the  
11 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars  
12 (\$5,000,000.00).

13           8.     PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA  
14 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
15 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to  
16 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged  
17 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained  
18 and continues to retain wages due to PLAINTIFF and the other members of the CALIFORNIA  
19 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction  
20 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the  
21 other members of the CALIFORNIA CLASS who have been economically injured by  
22 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable  
23 relief.

24           9.     The true names and capacities, whether individual, corporate, subsidiary,  
25 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are  
26 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious  
27 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this  
28 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are

1 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief  
2 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,  
3 inclusive, are responsible in some manner for one or more of the events and happenings that  
4 proximately caused the injuries and damages hereinafter alleged.

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

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

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

24         13. DEFENDANT'S uniform policies and practices alleged herein were unlawful,  
25 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain  
26 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

27         14. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction  
28 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and

1 other members of the CALIFORNIA CLASS who has been economically injured by  
2 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable  
3 relief.

#### 4 **JURISDICTION AND VENUE**

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

9 16. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
10 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs  
11 the CALIFORNIA CLASS across California, including in this County, and committed the  
12 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

#### 13 **THE CONDUCT**

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

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

5 **A. Meal Period Violations**

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

20 19. From time to time during the CLASS PERIOD, as a result of their rigorous work  
21 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other  
22 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty  
23 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other  
24 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for  
25 more than five (5) hours during some shifts without receiving a meal break. Further,  
26 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second  
27 off-duty meal period for some workdays in which these employees are required by DEFENDANT  
28 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other



1 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed “on-  
2 duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other  
3 CALIFORNIA CLASS Members were, from time to time, required to remain on premises, on  
4 duty and on call. DEFENDANT’s failure to provide PLAINTIFF and the CALIFORNIA CLASS  
5 Members with legally required meal breaks is evidenced by DEFENDANT’s business records.  
6 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks  
7 without additional compensation and in accordance with DEFENDANT’s strict corporate policy  
8 and practice.

9 **B. Rest Period Violations**

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

24 **C. Wage Statement Violations**

25 21. California Labor Code Section 226 required an employer to furnish its employees  
26 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours  
27 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,  
28 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the

1 name of the employee and only the last four digits of the employee's social security number or an  
2 employee identification number other than a social security number, (8) the name and address of  
3 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay  
4 period and the corresponding number of hours worked at each hourly rate by the employee.

5 22. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
6 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for  
7 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also  
8 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and  
9 accurate wage statements which failed to show, among other things, all deductions, the total hours  
10 worked and all applicable hourly rates in effect during the pay period, and the corresponding  
11 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed  
12 meal and rest periods. Further, DEFENDANT from time to time failed to provide PLAINTIFF  
13 and other CALIFORNIA CLASS Members with wage statements that provided the correct name  
14 and address of the legal entity that is the employer, in violation of Cal. Lab. Code § 226(a)(8).

15 23. In addition to the foregoing, DEFENDANT, from time to time, failed to provide  
16 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with  
17 Cal. Lab. Code § 226.

18 24. As a result, DEFENDANT issued PLAINTIFF and other members of the  
19 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,  
20 DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional  
21 payroll error due to clerical or inadvertent mistake.

22 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

23 25. During the CLASS PERIOD, from time-to-time DEFENDANT failed and  
24 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS  
25 for all hours worked.

26 26. During the CLASS PERIOD, from time-to-time DEFENDANT required  
27 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift  
28

1 work, including but not limited to, time spent cleaning. This resulted in PLAINTIFF and other  
2 members of the CALIFORNIA CLASS to have to work while off-the-clock.

3 27. DEFENDANT directed and directly benefited from the undercompensated off-the-  
4 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

5 28. DEFENDANT controlled the work schedules, duties, and protocols, applications,  
6 assignments, and employment conditions of PLAINTIFF and the other members of the  
7 CALIFORNIA CLASS.

8 29. DEFENDANT was able to track the amount of time PLAINTIFF and the other  
9 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to  
10 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all  
11 wages earned and owed for all the work they performed.

12 30. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-  
13 exempt employees, subject to the requirements of the California Labor Code.

14 31. DEFENDANT's policies and practices deprived PLAINTIFF and the other  
15 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed  
16 for the off-the-clock work activities. Because PLAINTIFF and the other members of the  
17 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than  
18 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime  
19 pay.

20 32. DEFENDANT knew or should have known that PLAINTIFF and the other  
21 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

22 33. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
23 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and  
24 benefit for the time spent working while off-the-clock, including but not limited to, time spent  
25 cleaning. DEFENDANT's uniform policy and practice to not pay PLAINTIFF and the members  
26 of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is  
27 evidenced by DEFENDANT's business records.

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1 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**  
2 **and Redeemed Sick Pay**

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

13 35. From-time-to-time, when calculating the regular rate of pay, in those pay periods  
14 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double time,  
15 paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-  
16 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus  
17 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked  
18 rather than just all non-overtime hours worked. Management and supervisors described the  
19 incentive/bonus program to potential and new employees as part of the compensation package.  
20 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA  
21 CLASS members must be included in the “regular rate of pay.” The failure to do so has resulted  
22 in a systematic underpayment of overtime and double time compensation, meal and rest period  
23 premiums, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS members by  
24 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time  
25 for non-employees shall be calculated in the same manner as the regular rate of pay for the  
26 workweek in which the non-exempt employee uses paid sick time, whether or not the employee  
27 actually works overtime in that workweek. DEFENDANTS’ conduct, as articulated herein, by  
28 failing to include the incentive compensation as part of the “regular rate of pay” for purposes of

1 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is  
2 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

14         **F. Unreimbursed Business Expenses**

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

26         38. In the course of their employment, DEFENDANT required PLAINTIFF and other  
27 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell  
28 phones and for the purchase of their uniforms as a result of and in furtherance of their job duties.

1 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required to use their  
2 own cell phones in order to perform work related tasks. Further, PLAINTIFF and other  
3 CALIFORNIA CLASS Members were required to purchase their own uniforms in order to work  
4 for DEFENDANT. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and  
5 other CALIFORNIA CLASS Members for the personal expenses incurred for the use of their  
6 personal cell phones and the purchase of uniforms. As a result, in the course of their employment  
7 with DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS Members incurred  
8 unreimbursed business expenses that included, but were not limited to, costs related to the use of  
9 their personal cell phones and purchase of uniforms, all on behalf of and for the benefit of  
10 DEFENDANT.

11 **G. Unlawful Rounding Practices**

12 39. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in  
13 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other  
14 CALIFORNIA CLASS Members for the actual time these employees worked each day, including  
15 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and  
16 practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being  
17 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did  
18 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping  
19 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying  
20 these employees for all their time worked, including the applicable overtime compensation for  
21 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from  
22 time to time, forfeited compensation for their time worked by working without their time being  
23 accurately recorded and without compensation at the applicable overtime rates.

24 40. Further, the mutability of DEFENDANTS' timekeeping system and unlawful  
25 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'  
26 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful  
27 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to  
28

1 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without  
2 receiving an off-duty meal break.

3 **H. Timekeeping Manipulation**

4 41. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an  
5 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of  
6 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the  
7 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal  
8 and rest breaks.

9 42. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally  
10 alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and other  
11 members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours  
12 worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed  
13 rest break.

14 43. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from  
15 time-to-time, forfeited time worked by working without their time being accurately recorded and  
16 without compensation at the applicable pay rates.

17 44. The mutability of the timekeeping system also allowed DEFENDANTS to alter  
18 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'  
19 timekeeping system so as to create the appearance that PLAINTIFF and other members of the  
20 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees  
21 were not at all times provided an off-duty meal break. This practice is a direct result of  
22 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)  
23 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

24 45. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
25 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit  
26 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and  
27 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all  
28

1 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business  
2 records.

3 **I. Violations for Untimely Payment of Wages**

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

9 **J. Unlawful Deductions**

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

14 48. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take  
15 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.  
16 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)  
17 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to  
18 provide PLAINTIFF with a second off-duty meal period each workday in which he was required  
19 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF  
20 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.  
21 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was  
22 supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks  
23 without additional compensation and in accordance with DEFENDANT'S strict corporate policy  
24 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to  
25 comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse PLAINTIFF for  
26 required business expenses related to the use of his personal cell phone and purchase of uniforms,  
27 in violation of Cal. Lab. Code § 2802. To date, DEFENDANT has not fully paid PLAINTIFF the  
28 minimum, overtime and double time compensation still owed to him or any penalty wages owed



1 to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does  
2 not exceed the sum or value of \$75,000.

3 **CLASS ACTION ALLEGATIONS**

4 49. PLAINTIFF bring this Class Action on behalf of himself, and a California class  
5 defined as all persons who are or previously were employed by Defendant Lee’s Sandwich  
6 Corporation and/or Defendant Lee’s Sandwich International and/or Defendant Lee’s Sandwiches  
7 NCA and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during  
8 the period beginning four (4) years prior to the filing of this Complaint and ending on the date as  
9 determined by the Court (the “CLASS PERIOD”).

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

16 51. The members of the class are so numerous that joinder of all class members is  
17 impractical.

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

- 27 a. Whether DEFENDANT maintained legally compliant meal period policies and  
28 practices;

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

23           53. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as  
24 a result of DEFENDANT’s conduct and actions alleged herein.

25           54. PLAINTIFF’S claims are typical of the claims of the CALIFORNIA CLASS, and  
26 PLAINTIFF have the same interests as the other members of the class.

27           55. PLAINTIFF will fairly and adequately represent and protect the interests of the  
28 CALIFORNIA CLASS Members.

1           56. PLAINTIFF retained able class counsel with extensive experience in class action  
2 litigation.

3           57. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the  
4 interest of the other CALIFORNIA CLASS Members.

5           58. There is a strong community of interest among PLAINTIFF and the members of  
6 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are  
7 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries  
8 sustained.

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

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

- 20           a. Inconsistent or varying adjudications with respect to individual members of the  
21 CALIFORNIA CLASS which would establish incompatible standards of conduct  
22 for the parties opposing the CALIFORNIA CLASS; and/or,  
23           b. Adjudication with respect to individual members of the CALIFORNIA CLASS  
24 which would as a practical matter be dispositive of the interests of the other  
25 members not party to the adjudication or substantially impair or impeded their  
26 ability to protect their interests.



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

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

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

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

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

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

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

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

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

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

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

1 and economic harm unless DEFENDANT is restrained from continuing to engage in these  
2 unlawful and unfair business practices.

3 **SECOND CAUSE OF ACTION**

4 **Failure To Pay Minimum Wages**

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

6 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

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

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

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

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

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

26 83. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
28

1 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF  
2 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

12 86. During the 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  
14 failure to pay all earned wages.

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

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

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



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

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

18 **THIRD CAUSE OF ACTION**

19 **Failure To Pay Overtime Compensation**

20 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

21 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

25 92. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for  
26 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial  
27 Welfare Commission requirements for DEFENDANT's failure to pay these employees for all  
28

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

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

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

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

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

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

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

28

1           99. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,  
2 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
3 overtime compensation for their time worked for DEFENDANT.

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

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

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

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

27           104. DEFENDANT knew or should have known that PLAINTIFF and the other  
28 members of the CALIFORNIA CLASS were undercompensated for their time worked.

1 DEFENDANT systematically elected, either through intentional malfeasance or gross  
2 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and  
3 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF  
4 and the other members of the CALIFORNIA CLASS the correct overtime wages for their  
5 overtime worked.

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

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

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1 additional hour of compensation at each employee’s regular rate of pay for each workday that rest  
2 period was not provided.

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Pay Wages When Due**

8 **(Cal. Lab. Code § 203)**

9 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

10 115. 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  
12 Complaint.

13 116. Cal. Lab. Code § 200 provides that:

14 As used in this article:

15 (d) "Wages" includes all amounts for labor performed by employees of every  
16 description, whether the amount is fixed or ascertained by the standard of time,  
task, piece, Commission basis, or other method of calculation.

17 (e) "Labor" includes labor, work, or service whether rendered or performed under  
18 contract, subcontract, partnership, station plan, or other agreement if the to be  
paid for is performed personally by the person demanding payment.

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

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

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





1 overtime under subdivision (a) of Section 515 or any applicable order of the  
2 Industrial Welfare Commission,

- 3 c. the number of piece-rate units earned and any applicable piece rate if the employee  
4 is paid on a piece-rate basis,
- 5 d. all deductions, provided that all deductions made on written orders of the employee  
6 may be aggregated and shown as one item,
- 7 e. net wages earned,
- 8 f. the inclusive dates of the period for which the employee is paid,
- 9 g. the name of the employee and his or her social security number, except that by  
10 January 1, 2008, only the last four digits of his or her social security number of an  
11 employee identification number other than social security number may be shown  
12 on the itemized statement,
- 13 h. the name and address of the legal entity that is the employer, and
- 14 i. all applicable hourly rates in effect during the pay period and the corresponding  
15 number of hours worked at each hourly rate by the employee.

16 125. When DEFENDANT did not accurately record PLAINTIFF'S and other  
17 CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed  
18 meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal.  
19 Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA  
20 CLASS Members with complete and accurate wage statements which failed to show, among other  
21 things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked  
22 and all applicable hourly rates in effect during the pay period and the corresponding amount of  
23 time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and  
24 rest periods. Further, DEFENDANT from time to time failed to provide PLAINTIFF and other  
25 CALIFORNIA CLASS Members with wage statements that provided the correct name and  
26 address of the legal entity that is the employer, in violation of Cal. Lab. Code § 226(a)(8).

27 126. In addition to the foregoing, DEFENDANT failed to provide itemized wage  
28 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the

1 requirements of California Labor Code Section 226.

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

13 **EIGHTH CAUSE OF ACTION**

14 **Failure To Reimburse Employees for Required Expenses**

15 **(Cal. Lab. Code §§ 2802)**

16 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

17 128. 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  
19 Complaint.

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

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

26 130. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.  
27 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS  
28 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS  
members for expenses which included, but were not limited to, the use of their personal cell

1 phones and purchase of work uniforms all on behalf of and for the benefit of DEFENDANT.  
2 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by  
3 DEFENDANT to use their personal cell phones and purchase of work uniforms to execute their  
4 essential job duties on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and  
5 procedure was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for  
6 expenses resulting from the use of their personal cell phones and purchase of work uniforms for  
7 DEFENDANT within the course and scope of their employment for DEFENDANT. These  
8 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by  
9 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were  
10 necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,  
11 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS  
12 members for these expenses as an employer is required to do under the laws and regulations of  
13 California.

14 131. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred  
15 by him and the CALIFORNIA CLASS members in the discharge of their job duties for  
16 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the  
17 statutory rate and costs under Cal. Lab. Code § 2802.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and  
20 severally, as follows:

21 1. On behalf of the CALIFORNIA CLASS:

- 22 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA  
23 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 24 b. An order temporarily, preliminarily and permanently enjoining and restraining  
25 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 26 c. An order requiring DEFENDANT to pay all overtime wages and all sums  
27 unlawfully withheld from compensation due to PLAINTIFF and the other members  
28 of the CALIFORNIA CLASS; and

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d. Restitutionary disgorgement of DEFENDANT’s ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT’s violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
- e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.

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3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: January 31, 2023

**ZAKAY LAW GROUP, APLC**


By:   
Shani O. Zakay  
Attorney for PLAINTIFF

**DEMAND FOR A JURY TRIAL**

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

DATED: January 31, 2023

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for PLAINTIFF