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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DAVID BRATT, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Case No: 24CU002277C

CLASS ACTION COMPLAINT FOR:

Plaintiff,

v.

MOSSY AUTOMOTIVE GROUP II, LLC, a
California limited liability company; MOSSY
AUTOMOTIVE GROUP EL CAJON INC., a
California Corporation; MOSSY
AUTOMOTIVE GROUP INSURANCE, LLC,
a California limited liability company; MOSSY
AUTOMOTIVE GROUP LEMON GROVE
INC., a California corporation; MOSSY
AUTOMOTIVE GROUP, INC., a California
corporation; MOSSY AUTO IMPORTS, a
California corporation; MOSSY
CHEVROLET, INC., a California corporation;
MOSSY COMPANY, INC., a California
corporation; MOSSY EUROPEAN IMPORTS,
INC., a California corporation; MOSSY
FORD, INC., a California corporation;

- 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;

1 MOSSY HOLDING COMPANY, INC., a
2 Delaware corporation; MOSSY NISSAN
3 CHULA VISTA, a California corporation;
4 MOSSY NISSAN EL CAJON, a California
5 corporation; MOSSY NISSAN ESCONDIDO,
6 a California corporation; MOSSY NISSAN
7 KEARNY MESA, a California corporation;
8 MOSSY NISSAN NATIONAL CITY, a
9 California corporation; MOSSY NISSAN
10 OCEANSIDE, a California corporation;
11 MOSSY NISSAN POWAY, a California
12 corporation; MOSSY NISSAN, INC., a
13 California corporation; MOSSY VEHICLE
14 LEASING, INC., a California corporation;
15 MAG WEST MOSSY CDJR III LP, a
16 California limited partnership; MAG WEST
17 MOSSY FORD II, LP, a California limited
18 partnership; MAG WEST MOSSY HONDA II,
19 LP, a California limited partnership; MAG
20 WEST MOSSY NISSAN II, LP, a California
21 limited partnership; MAG WEST MOSSY
22 NISSAN III LP, a California limited
23 partnership; MAG WEST MOSSY TOYOTA
24 II, LP, a California limited partnership; MAG
25 WEST MOSSY VOLKSWAGEN II, LP, a
26 California limited partnership; MAG WEST
27 MOSSY VOLKSWAGEN III LP, a California
28 limited partnership; and DOES 1-50, Inclusive,

Defendants.

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

DEMAND FOR A JURY TRIAL

19 PLAINTIFF DAVID BRATT (“PLAINTIFF”), an individual, on behalf of himself and all
20 other similarly situated current and former employees, alleges on information and belief, except for
21 his own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

23 1. Defendant MOSSY AUTOMOTIVE GROUP II, LLC (“Defendant Mossy II”) is
24 a California limited liability company that at all relevant times mentioned herein conducted and
25 continues to conduct substantial and regular business throughout California.

26 2. Defendant MOSSY AUTOMOTIVE GROUP EL CAJON INC. (“Defendant
27 Mossy El Cajon”) is a California corporation that at all relevant times mentioned herein conducted
28 and continues to conduct substantial and regular business throughout California.

1 3. Defendant MOSSY AUTOMOTIVE GROUP INSURANCE, LLC (“Defendant
2 Mossy Insurance”) is a California limited liability company that at all relevant times mentioned
3 herein conducted and continues to conduct substantial and regular business throughout California.

4 4. MOSSY AUTOMOTIVE GROUP LEMON GROVE INC. (“Defendant Mossy
5 Lemon Grove”) is a California corporation that at all relevant times mentioned herein conducted
6 and continues to conduct substantial and regular business throughout California.

7 5. Defendant MOSSY AUTOMOTIVE GROUP, INC. (“Defendant Mossy
8 Automotive”) is a California corporation that at all relevant times mentioned herein conducted
9 and continues to conduct substantial and regular business throughout California.

10 6. Defendant MOSSY AUTO IMPORTS (“Defendant Mossy Imports”) is a
11 California corporation that at all relevant times mentioned herein conducted and continues to
12 conduct substantial and regular business throughout California.

13 7. Defendant MOSSY CHEVROLET, INC. (“Defendant Mossy Chevy”) is a
14 California corporation that at all relevant times mentioned herein conducted and continues to
15 conduct substantial and regular business throughout California.

16 8. Defendant MOSSY COMPANY, INC. (“Defendant Mossy Company”) is a
17 California corporation that at all relevant times mentioned herein conducted and continues to
18 conduct substantial and regular business throughout California.

19 9. Defendant MOSSY EUROPEAN IMPORTS, INC. (“Defendant Mossy
20 European”) is a California corporation that at all relevant times mentioned herein conducted and
21 continues to conduct substantial and regular business throughout California.

22 10. Defendant MOSSY FORD, INC. (“Defendant Mossy Ford”) is a California
23 corporation that at all relevant times mentioned herein conducted and continues to conduct
24 substantial and regular business throughout California.

25 11. Defendant MOSSY HOLDING COMPANY, INC. (“Defendant Mossy Holding”)
26 is a Delaware corporation that at all relevant times mentioned herein conducted and continues to
27 conduct substantial and regular business throughout California
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1 12. Defendant MOSSY NISSAN CHULA VISTA (“Defendant Mossy Chula Vista”)
2 is a California corporation that at all relevant times mentioned herein conducted and continues to
3 conduct substantial and regular business throughout California.

4 13. Defendant MOSSY NISSAN EL CAJON (“Defendant Mossy Nissan El Cajon”)
5 is a California corporation that at all relevant times mentioned herein conducted and continues to
6 conduct substantial and regular business throughout California.

7 14. Defendant MOSSY NISSAN ESCONDIDO (“Defendant Mossy Escondido”) is a
8 California corporation that at all relevant times mentioned herein conducted and continues to
9 conduct substantial and regular business throughout California.

10 15. Defendant MOSSY NISSAN KEARNY MESA (“Defendant Mossy Kearny
11 Mesa”) is a California corporation that at all relevant times mentioned herein conducted and
12 continues to conduct substantial and regular business throughout California.

13 16. Defendant MOSSY NISSAN NATIONAL CITY (“Defendant Mossy National
14 City”) is a California corporation that at all relevant times mentioned herein conducted and
15 continues to conduct substantial and regular business throughout California.

16 17. Defendant MOSSY NISSAN OCEANSIDE (“Defendant Mossy Oceanside”) is a
17 California corporation that at all relevant times mentioned herein conducted and continues to
18 conduct substantial and regular business throughout California.

19 18. Defendant MOSSY NISSAN POWAY (“Defendant Mossy Poway”) is a
20 California corporation that at all relevant times mentioned herein conducted and continues to
21 conduct substantial and regular business throughout California.

22 19. Defendant MOSSY NISSAN, INC. (“Defendant Mossy Nissan”) is a California
23 corporation that at all relevant times mentioned herein conducted and continues to conduct
24 substantial and regular business throughout California.

25 20. Defendant MOSSY VEHICLE LEASING, INC. (“Defendant Mossy Leasing”) is
26 a California corporation that at all relevant times mentioned herein conducted and continues to
27 conduct substantial and regular business throughout California.
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1 21. Defendant MAG WEST MOSSY CDJR III LP (“Defendant MAG CDJR”) is a
2 California limited partnership that at all relevant times mentioned herein conducted and continues
3 to conduct substantial and regular business throughout California.

4 22. Defendant MAG WEST MOSSY FORD II, LP (“Defendant MAG Ford”) is a
5 California limited partnership that at all relevant times mentioned herein conducted and continues
6 to conduct substantial and regular business throughout California.

7 23. Defendant MAG WEST MOSSY HONDA II, LP (“Defendant MAG Honda”) is a
8 California limited partnership that at all relevant times mentioned herein conducted and continues
9 to conduct substantial and regular business throughout California.

10 24. Defendant MAG WEST MOSSY NISSAN II, LP (“Defendant MAG Nissan II”) is
11 a California limited partnership that at all relevant times mentioned herein conducted and
12 continues to conduct substantial and regular business throughout California.

13 25. Defendant MAG WEST MOSSY NISSAN III LP (“Defendant MAG Nissan III”) is
14 a California limited partnership that at all relevant times mentioned herein conducted and
15 continues to conduct substantial and regular business throughout California.

16 26. Defendant MAG WEST MOSSY TOYOTA II, LP (“Defendant MAG Toyota”) is
17 a California limited partnership that at all relevant times mentioned herein conducted and
18 continues to conduct substantial and regular business throughout California.

19 27. Defendant MAG WEST MOSSY VOLKSWAGEN II, LP (“Defendant MAG
20 Volkswagen II”) is a California limited partnership that at all relevant times mentioned herein
21 conducted and continues to conduct substantial and regular business throughout California.

22 28. Defendant MAG WEST MOSSY VOLKSWAGEN III LP (“Defendant MAG
23 Volkswagen III”) is a California limited partnership that at all relevant times mentioned herein
24 conducted and continues to conduct substantial and regular business throughout California.

25 29. DEFENDANT operates car dealerships in California, including in the county of
26 San Diego, where PLAINTIFF worked.

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1 30. PLAINTIFF alleges there has existed a unity of interest and ownership between
2 Defendants such that any individuality and separateness between the entities has ceased and all
3 Defendants are referred to herein as “DEFENDANT” and/or “DEFENDANTS.”

4 31. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers
5 of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest
6 and ownership between Defendant Mossy II, Defendant Mossy El Cajon, Defendant Mossy
7 Insurance, Defendant Mossy Lemon Grove, Defendant Mossy Automotive, Defendant Mossy
8 Imports, Defendant Mossy Chevy, Defendant Mossy Company, Defendant Mossy European,
9 Defendant Mossy Ford, Defendant Mossy Holding, Defendant Mossy Chula Vista, Defendant
10 Mossy Nissan El Cajon, Defendant Mossy Escondido, Defendant Mossy Kearny Mesa, Defendant
11 Mossy National City, Defendant Oceanside, Defendant Mossy Poway, Defendant Mossy Nissan,
12 Defendant Mossy Leasing, Defendant MAG CDJR, Defendant MAG Ford, Defendant MAG
13 Honda, Defendant MAG Nissan II, Defendant MAG Nissan III, Defendant MAG Toyota,
14 Defendant MAG Volkswagen II, and Defendant MAG Volkswagen III are therefore alter egos of
15 each other. Adherence to the fiction of the separate existence of DEFENDANT would permit an
16 abuse of the corporate privilege, and would promote injustice by protecting DEFENDANT from
17 liability for the wrongful acts committed by them.

18 32. PLAINTIFF further alleges that DEFENDANTS are the alter egos of each other
19 for the following reasons:

- 20 a. On the California Secretary of State’s website (<https://businesssearch.sos.ca.gov/>)
21 Defendant Mossy II, Defendant Mossy El Cajon, Defendant Mossy Insurance,
22 Defendant Mossy Lemon Grove, Defendant Mossy Automotive, Defendant Mossy
23 Imports, Defendant Mossy Chevy, Defendant Mossy Company, Defendant Mossy
24 European, Defendant Mossy Ford, Defendant Mossy Holding, Defendant Mossy
25 Chula Vista, Defendant Mossy Nissan El Cajon, Defendant Mossy Escondido,
26 Defendant Mossy Kearny Mesa, Defendant Mossy National City, Defendant
27 Oceanside, Defendant Mossy Poway, Defendant Mossy Nissan, Defendant Mossy
28 Leasing, Defendant MAG CDJR, Defendant MAG Ford, Defendant MAG Honda,
Defendant MAG Nissan II, Defendant MAG Nissan III, Defendant MAG Toyota,
Defendant MAG Volkswagen II, and Defendant MAG Volkswagen III have the

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same officers and/or entity address and/or mailing address and/or Agent for Service of Process;

b. On information and belief Defendant Mossy II, Defendant Mossy El Cajon, Defendant Mossy Insurance, Defendant Mossy Lemon Grove, Defendant Mossy Automotive, Defendant Mossy Imports, Defendant Mossy Chevy, Defendant Mossy Company, Defendant Mossy European, Defendant Mossy Ford, Defendant Mossy Holding, Defendant Mossy Chula Vista, Defendant Mossy Nissan El Cajon, Defendant Mossy Escondido, Defendant Mossy Kearny Mesa, Defendant Mossy National City, Defendant Oceanside, Defendant Mossy Poway, Defendant Mossy Nissan, Defendant Mossy Leasing, Defendant MAG CDJR, Defendant MAG Ford, Defendant MAG Honda, Defendant MAG Nissan II, Defendant MAG Nissan III, Defendant MAG Toyota, Defendant MAG Volkswagen II, and Defendant MAG Volkswagen III utilize the same standardized employment forms and issue the same employment policies and same pay stubs;

c. On information and belief Defendant Mossy II, Defendant Mossy El Cajon, Defendant Mossy Insurance, Defendant Mossy Lemon Grove, Defendant Mossy Automotive, Defendant Mossy Imports, Defendant Mossy Chevy, Defendant Mossy Company, Defendant Mossy European, Defendant Mossy Ford, Defendant Mossy Holding, Defendant Mossy Chula Vista, Defendant Mossy Nissan El Cajon, Defendant Mossy Escondido, Defendant Mossy Kearny Mesa, Defendant Mossy National City, Defendant Oceanside, Defendant Mossy Poway, Defendant Mossy Nissan, Defendant Mossy Leasing, Defendant MAG CDJR, Defendant MAG Ford, Defendant MAG Honda, Defendant MAG Nissan II, Defendant MAG Nissan III, Defendant MAG Toyota, Defendant MAG Volkswagen II, and Defendant MAG Volkswagen III have an executive team which supervise and manage the operations of all of DEFENDANTS' dealerships, supervised and managed the finances of all of DEFENDANTS' dealerships, supervised and managed the marketing of all of DEFENDANTS' dealerships, supervised and managed the human resources of all of DEFENDANTS' dealerships, and

1 supervised and managed the food and beverage offerings at all of DEFENDANTS’
2 dealerships.

3 33. PLAINTIFF alleges that DEFENDANTS’ various separate corporate entities are
4 used by an individual or individuals, or by another corporation, to accomplish inequitable
5 purposes, including to limit liability for the unlawful acts of DEFENDANT.

6 34. PLAINTIFF alleges that there is such a unity of interest and ownership between
7 DEFENDANTS’ various corporate entities that own DEFENDANTS’ restaurants and the
8 individual or individuals, or organization controlling those corporate entities that their separate
9 personalities no longer exist.

10 35. PLAINTIFF further alleges that the failure to disregard the various corporate
11 entities would promote injustice.

12 36. Defendant Mossy II, and/or Defendant Mossy El Cajon, and/or Defendant Mossy
13 Insurance, and/or Defendant Mossy Lemon Grove, and/or Defendant Mossy Automotive, and/or
14 Defendant Mossy Imports, and/or Defendant Mossy Chevy, and/or Defendant Mossy Company,
15 and/or Defendant Mossy European, and/or Defendant Mossy Ford, and/or Defendant Mossy
16 Holding, and/or Defendant Mossy Chula Vista, and/or Defendant Mossy Nissan El Cajon, and/or
17 Defendant Mossy Escondido, and/or Defendant Mossy Kearny Mesa, Defendant Mossy National
18 City, and/or Defendant Oceanside, and/or Defendant Mossy Poway, and/or Defendant Mossy
19 Nissan, and/or Defendant Mossy Leasing, and/or Defendant MAG CDJR, and/or Defendant MAG
20 Ford, and/or Defendant MAG Honda, and/or Defendant MAG Nissan II, and/or Defendant MAG
21 Nissan III, and/or Defendant MAG Toyota, and/or Defendant MAG Volkswagen II, and/or
22 Defendant MAG Volkswagen III were the joint employers of PLAINTIFF as evidenced by the
23 contracts signed and by the company PLAINTIFF performed work for respectively, and therefore
24 jointly responsible as employers for the conduct alleged herein and collectively referred to herein
25 as “DEFENDANTS” or “DEFENDANT.”

26 37. PLAINTIFF has been employed by DEFENDANTS in California since January of
27 2023 as a non-exempt employee, paid on an hourly basis, non-discretionary bonuses, and entitled
28 to the legally required meal and rest periods and payment of minimum and overtime wages due
for all time worked.

1 38. PLAINTIFF brings this Class Action on behalf of himself and a California class,
2 defined as all persons who are or previously were employed by DEFENDANT in California and
3 classified as non-exempt, exempt, piece-rate based, and/or commission-based employees (the
4 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing
5 of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”).
6 The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is
7 under five million dollars (\$5,000,000.00).

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

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

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

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

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

20 44. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
21 unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain
22 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

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

28 **JURISDICTION AND VENUE**

1 toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should
2 be adjusted accordingly.

3 **A. Meal Period Violations**

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

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

1 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
2 required to remain on duty and on call. Further, DEFENDANTS from time to time required
3 PLAINTIFF and other CALIFORNIA CLASS Members to maintain cordless communication
4 devices in order to receive and respond to work-related communications during what was
5 supposed to be their off-duty meal breaks. DEFENDANTS' failure to provide PLAINTIFF and
6 the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
7 DEFENDANTS' business records. As a result of their rigorous work schedules and
8 DEFENDANTS' inadequate staffing, PLAINTIFF and other members of the CALIFORNIA
9 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
10 DEFENDANTS' strict corporate policy and practice.

11 **B. Rest Period Violations**

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

1 **C. Unreimbursed Business Expenses**

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

13 53. In the course of their employment, DEFENDANTS required PLAINTIFF and
14 other CALIFORNIA CLASS Members to incur personal expenses for the use of their personal
15 cell phones, vehicles, computers, and internet connection as a result of and in furtherance of their
16 job duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required
17 to use their personal cell phones, vehicles, computers, and internet connection in order to perform
18 work related tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and
19 other CALIFORNIA CLASS Members for the use of their personal cell phones, vehicles,
20 computers, and internet connection. As a result, in the course of their employment with
21 DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members incurred
22 unreimbursed business expenses that included, but were not limited to, costs related to the use of
23 their personal cell phones, vehicles, computers, and internet connection, all on behalf of and for
24 the benefit of DEFENDANT.

25 **D. Wage Statement Violations**

26 54. California Labor Code Section 226 required an employer to furnish its employees
27 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
28 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,

1 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
2 name of the employee and only the last four digits of the employee's social security number or an
3 employee identification number other than a social security number, (8) the name and address of
4 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate by the employee.

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

14 56. Further, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the
15 CALIFORNIA CLASS with wage statements that provide all applicable hourly rates in effect
16 during the pay period and the corresponding number of hours worked at each hourly rate by the
17 employee, in violation of Cal. Lab. Code § 226(a)(9).

18 57. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
19 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
20 Cal. Lab. Code § 226.

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

25 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

26 59. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
27 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
28 for all hours worked.

1 60. During the CLASS PERIOD, from time-to-time DEFENDANTS required
2 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
3 work, including but not limited to time spent locking all vehicles on DEFENDANTS' premises.
4 This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work
5 while off-the-clock.

6 61. DEFENDANTS directed and directly benefited from the undercompensated off-
7 the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

8 62. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
9 assignments, and employment conditions of PLAINTIFF and the other members of the
10 CALIFORNIA CLASS.

11 63. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
12 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
13 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
14 wages earned and owed for all the work they performed.

15 64. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
16 exempt employees, subject to the requirements of the California Labor Code.

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

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

25 67. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
26 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and
27 benefit for the time spent working while off-the-clock. DEFENDANTS' uniform policy and
28 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all

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

3 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
4 **and Redeemed Sick Pay**

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

14 69. State law provides that employees must be paid overtime at one-and-one-half times
15 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS were compensated at
16 an hourly rate plus commissions and/or non-discretionary incentive pay that was tied to specific
17 elements of an employee’s performance and/or commissions.

18 70. DEFENDANTS’ non-discretionary commission and bonus program provided the
19 CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation
20 when the employees met the various performance goals set by DEFENDANT. However, when
21 calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA
22 CLASS worked overtime and earned non-discretionary bonus and/or commission wages,
23 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or
24 commission wages as part of the employees’ “regular rate of pay.”

25 71. Management and supervisors described the bonus and commissions programs and
26 commission compensation program to potential and new employees as part of the compensation
27 package for new and used car salespersons including PLAINTIFF and the CALIFORNIA
28 CLASS. As a matter of law, the incentive and commission compensation received by

1 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly
2 calculated into the “regular rate of pay” for purposes of overtime and double time compensation,
3 meal and rest period premium payments, and sick pay. DEFENDANT’s failure to do so has
4 resulted in DEFENDANT’s systematic underpayment of overtime and double time compensation,
5 meal and rest period premium payments, and sick pay to PLAINTIFF and other CALIFORNIA
6 CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time
7 for non-employees shall be calculated in the same manner as the regular rate of pay for the
8 workweek in which the employee uses paid sick time, whether or not the employee actually works
9 overtime in that workweek. DEFENDANTS’ conduct, as articulated herein, by failing to include
10 the incentive compensation as part of the “regular rate of pay” for purposes of sick pay
11 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable
12 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

13 72. In violation of the applicable sections of the California Labor Code and the
14 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
15 matter of company policy, practice and procedure, intentionally and knowingly failed to
16 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
17 of pay for all overtime and double time compensation, meal and rest period premium payments,
18 and sick pay. This uniform policy and practice of DEFENDANTS is intended to purposefully
19 avoid the payment of the correct overtime and double time compensation, meal and rest period
20 premium payments, and sick pay as required by California law which allowed DEFENDANTS to
21 illegally profit and gain an unfair advantage over competitors who complied with the law. To the
22 extent equitable tolling operates to toll claims by the CALIFORNIA CLASS members against
23 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

24 **G. Commission and Piece-Rate Violations**

25 73. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
26 the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those
27 instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission
28 and/or piece-rate basis, PLAINTIFF and the CALIFORNIA CLASS were entitled to be

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

10 74. Further, from time-to-time during the CLASS PERIOD, DEFENDANTS
11 improperly misclassified PLAINTIFF and the CALIFORNIA CLASS members who were paid
12 on a draw versus commission basis as exempt from overtime compensation. During the CLASS
13 PERIOD, DEFENDANTS included advanced draws in order to meet the salary-basis test for the
14 overtime exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet
15 the salary-basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th
16 252-254.) As a result, PLAINTIFF and the CALIFORNIA CLASS members who were paid on
17 a draw versus commission basis forfeited overtime wages by DEFENDANTS' failure to
18 accurately classify them as non-exempt from overtime compensation.

19 **H. Unlawful Deductions**

20 75. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
21 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
22 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
23 DEFENDANTS violated Labor Code § 221.

24 **I. Timekeeping Manipulation**

25 76. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
26 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
27 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
28 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal

1 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
2 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and
3 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
4 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
5 missed rest breaks.

6 77. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
7 time-to-time, forfeited time worked by working without their time being accurately recorded and
8 without compensation at the applicable pay rates.

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

16 79. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
17 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
18 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and
19 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
20 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
21 records.

22 **J. Unlawful Rounding Practices**

23 80. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
24 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
25 CALIFORNIA CLASS Members for the actual time these employees worked each day,
26 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
27 policy and practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being
28 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did

1 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS’ timekeeping
2 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
3 these employees for all their time worked, including the applicable overtime compensation for
4 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
5 time to time, forfeited compensation for their time worked by working without their time being
6 accurately recorded and without compensation at the applicable overtime rates.

7 81. Further, the mutability of DEFENDANTS’ timekeeping system and unlawful
8 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members’
9 time being inaccurately recorded. As a result, from time to time, DEFENDANTS’ unlawful
10 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
11 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
12 receiving an off-duty meal break.

13 **K. Violations for Untimely Payment of Wages**

14 82. Pursuant to California Labor Code section 204, PLAINTIFF and the
15 CALIFORNIA CLASS members were entitled to timely payment of wages during their
16 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
17 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
18 meal period premium wages, and rest period premium wages within permissible time period.

19 83. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
20 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant
21 to Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall
22 become due and payable not later than 72 hours thereafter, unless the employee has given 72
23 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
24 or her wages at the time of quitting.” PLAINTIFF and the CALIFORNIA CLASS Members
25 were, from time to time, not timely provided the wages earned and unpaid at the time of their
26 discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

1 84. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
2 paying all wages due at time of termination for all CALIFORNIA CLASS Members whose
3 employment ended during the CLASS PERIOD.

4 **L. Sick Pay Violations**

5 85. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after
6 July 1, 2015, works in California for the same employer for 30 or more days within a year from
7 the commencement of employment is entitled to paid sick days as specified in this section.”
8 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.
9 From time to time, DEFENDANT failed to have a policy or practice in place that provided
10 PLAINTIFF and other members of the CALIFORNIA CLASS with sick days and/or paid sick
11 leave.

12 86. California Labor Code Section 246(i) requires an employer to furnish its
13 employees with written wage statements setting forth the amount of paid sick leave available.
14 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
15 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
16 forth the amount of paid sick leave available

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

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

7 CLASS ACTION ALLEGATIONS

8 88. PLAINTIFF brings this Class Action on behalf of himself, and a California class
9 defined as all persons who are or previously were employed by DEFENDANT in California and
10 classified as non-exempt, exempt, piece-rate based, and/or commission-based employees (the
11 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the
12 filing of this Complaint and ending on the date as determined by the Court (the “CLASS
13 PERIOD”).

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

20 90. The members of the class are so numerous that joinder of all class members is
21 impractical.

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

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

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

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

1 93. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
2 PLAINTIFF has the same interests as the other members of the class.

3 94. PLAINTIFF will fairly and adequately represent and protect the interests of the
4 CALIFORNIA CLASS Members.

5 95. PLAINTIFF retained able class counsel with extensive experience in class action
6 litigation.

7 96. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
8 interest of the other CALIFORNIA CLASS Members.

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

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

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

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

27 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
28 which would as a practical matter be dispositive of the interests of the other

1 members not party to the adjudication or substantially impair or impeded their
2 ability to protect their interests.

3 100. Class treatment provides manageable judicial treatment calculated to bring an
4 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
5 the conduct of DEFENDANT.

6 **FIRST CAUSE OF ACTION**

7 **Unlawful Business Practices**

8 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

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

10 101. 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.

13 102. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
14 Code § 17021.

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

19 Any person who engages, has engaged, or proposes to engage in unfair competition may
20 be enjoined in any court of competent jurisdiction. The court may make such orders or
21 judgments, including the appointment of a receiver, as may be necessary to prevent the
22 use or employment by any person of any practice which constitutes unfair competition, as
23 defined in this chapter, or as may be necessary to restore to any person in interest any
24 money or property, real or personal, which may have been acquired by means of such
25 unfair competition. (Cal. Bus. & Prof. Code § 17203).

26 104. By the conduct alleged herein, DEFENDANTS have engaged and continue to
27 engage in a business practice which violates California law, including but not limited to, the
28 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.

1 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
2 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

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

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

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

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

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

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

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

5 **SECOND CAUSE OF ACTION**

6 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

28

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

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

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

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

1 137. As a direct result of DEFENDANTS’ 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 DEFENDANTS.

4 138. 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 brings this Action on behalf of himself and the CALIFORNIA CLASS based on
10 DEFENDANTS’ violations of non-negotiable, non-waivable rights provided by the State of
11 California.

12 139. 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.

15 140. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of
16 the 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 DEFENDANTS
20 failed to accurately record and pay as evidenced by DEFENDANTS’ business records and
21 witnessed by employees.

22 141. By virtue of DEFENDANTS’ 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.

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

1 DEFENDANTS 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 DEFENDANTS perpetrated this systematic scheme by refusing to pay
4 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for
5 their overtime worked.

6 143. 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, DEFENDANTS acted and continue 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.

14 144. 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 DEFENDANTS, 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, DEFENDANTS' 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. DEFENDANTS' 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.

24 **FOURTH CAUSE OF ACTION**

25 **Failure To Provide Required Meal Periods**

26 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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1 145. 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
3 Complaint.

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

18 147. DEFENDANTS further violated California Labor Code §§ 226.7 and the
19 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
20 Members who were not provided a meal period, in accordance with the applicable Wage Order,
21 one additional hour of compensation at each employee’s regular rate of pay for each workday that
22 a meal period was not provided.

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

26 **FIFTH CAUSE OF ACTION**
27 **Failure To Provide Required Rest Periods**
28 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

5 150. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
6 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
7 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
8 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
9 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
10 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
11 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
12 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other
13 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
14 DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to
15 compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as
16 required by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to
17 provide PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid
18 rest periods is evidenced by DEFENDANTS' business records.

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

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

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SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

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

153. 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.

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

- a. Gross wages earned,
- b. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

1 155. When DEFENDANTS did not accurately record PLAINTIFF'S and other
2 CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed
3 meal and rest break premiums, or were not paid for all hours worked, DEFENDANTS violated
4 Cal. Lab. Code § 226 in that DEFENDANTS failed to provide PLAINTIFFS and other
5 CALIFORNIA CLASS Members with complete and accurate wage statements which failed to
6 show, among other things, all deductions, the accurate gross wages earned, net wages earned, the
7 total hours worked and all applicable hourly rates in effect during the pay period and the
8 corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty
9 payments or missed meal and rest periods.

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

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

SEVENTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code § 203)

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

1 158. 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
3 Complaint.

4 159. Cal. Lab. Code § 200 provides that:

5 As used in this article:

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

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

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

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

25 162. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS
26 Members' employment contract.

27 163. Cal. Lab. Code § 203 provides:

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

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

1 expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by
2 DEFENDANTS' conduct to assert any waiver of this expectation. Although these expenses were
3 necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,
4 DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
5 members for these expenses as an employer is required to do under the laws and regulations of
6 California.

7 169. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
8 by him and the CALIFORNIA CLASS members in the discharge of their job duties for
9 DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the
10 statutory rate and costs under Cal. Lab. Code § 2802.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF prays for a judgment against Defendant as follows:

13 1. On behalf of the CALIFORNIA CLASS:

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

24 2. On behalf of the CALIFORNIA CLASS:

- 25 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
26 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
27 to Cal. Code of Civ. Proc. § 382;
28 b. Compensatory damages, according to proof at trial, including compensatory

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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.

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, § 246 and/or § 1194.

DATED: July 22, 2024

ZAKAY LAW GROUP, APLC

By: 

 Shani O. Zakay, Esq.
 Attorney for PLAINTIFF


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DEMAND FOR A JURY TRIAL

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

DATED: July 22, 2024

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay, Esq.
Attorney for PLAINTIFF