

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

O'NEILL BEVERAGES CO. LLC, a Delaware Limited Liability Company; and DOES 1-50, Inclusive,

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

LUTHER RODDY, an individual, on behalf of himself and on behalf of all persons similarly situated,

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

FILED

JAN 10 2022

JAMES M. KIM
COURT EXECUTIVE OFFICER
MARIN CO. SUPERIOR COURT

BY: N. JOHNSON

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es):

Marin County Superior Court
3501 Civic Center Drive
San Rafael, CA 94903

CASE NUMBER:
(Número del Caso): CIV2200067

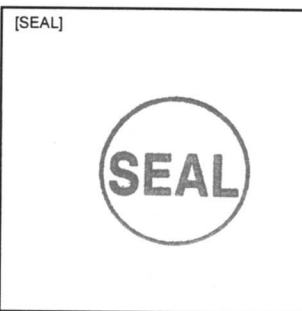
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: JAN 10 2022
(Fecha)

Clerk, by JAMES M. KIM N. JOHNSON, Deputy
(Secretario) (Adjunto)

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



NOTICE TO THE PERSON SERVED: You are served

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

FILED

JAN 10 2022

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: N. Johnson, Deputy
N. Johnson

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar # 290572)
5440 Morehouse Drive Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

Attorneys for Plaintiff LUTHER RODDY

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

LUTHER RODDY, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

O'NEILL BEVERAGES CO. LLC, a Delaware
Limited Liability Company; and DOES 1-50,
Inclusive,

Defendants.

Case No. CIV2200067

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SETIONS 2698 *ET SEQ.*

DEMAND FOR JURY TRIAL

BY FAX

SUMMONS ISSUED

435 1-10-22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Plaintiff LUTHER RODDY (“PLAINTIFF”) an individual, in his representative capacity on
2 behalf of himself, the State of California, and fellow current and former AGGRIEVED EMPLOYEES,
3 defined *supra*, against O’NEILL BEVERAGES CO. LLC (“DEFENDANT”), alleges on information and
4 belief, except for his own acts and knowledge which are based on personal knowledge, the following:

5 **INTRODUCTION**

6 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys General
7 Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former
8 aggrieved employees of DEFENDANT for engaging in a pattern and practice of wage and hour
9 violations under the California Labor Code.

10 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT decreased
11 their employment-related costs by systematically violating California wage and hour laws.

12 3. DEFENDANT’s systematic pattern of wage and hour and IWC Wage Order violations
13 toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 14 a. Failure to provide compliant meal periods;
- 15 b. Failure to provide compliant rest periods;
- 16 c. Failure to pay all minimum, regular and overtime wages, including at the correct rate;
- 17 d. Failure to reimburse for business expenses;
- 18 e. Failure to maintain true and accurate records;
- 19 f. Failure to provide accurate itemized wage statements; and
- 20 g. Failure to timely pay wages due during, and upon termination of employment.

21 4. PLAINTIFF brings this representative action against DEFENDANTS on behalf of himself
22 and all other aggrieved employees of DEFENDANT in California seeking all civil penalties and unpaid
23 wages permitted pursuant to California Labor Code § 2699, *et seq.*

24 5. PLAINTIFF reserves the right to name additional representatives throughout the State of
25 California.



1 **THE PARTIES**

2 6. Defendant O’NEILL BEVERAGES CO. LLC (“DEFENDANT” and/or “DEFENDANTS”) is
3 an Delaware limited liability company that at all relevant times mentioned herein conducted and
4 continues to conduct substantial business in the state of California, county of Marin, and owns, operates,
5 and/or manages wineries and distilleries.

6 7. PLAINTIFF was employed by DEFENDANT as a non-exempt employee, paid on an
7 hourly basis and entitled to overtime pay and legally compliant meal and rest periods from January of
8 2020 to August of 2021.

9 8. PLAINTIFF brings this action in his representative capacity on behalf of the State of
10 California and on behalf of all of DEFENDANT’s current and former employees employed in
11 California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et seq.*
12 (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for DEFENDANT between November
13 1, 2020 and the present (“PAGA PERIOD”).

14 9. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code §
15 2699(c) because he was employed by DEFENDANT and suffered one or more of the alleged Labor Code
16 violations committed by DEFENDANT.

17 10. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times were,
18 employees of DEFENDANT, within the meanings set forth in the California Labor Code and the
19 applicable Industrial Welfare Commission Wage Order.

20 11. Each of the fictitiously named defendants participated in the acts alleged in this
21 Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50,
22 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth
23 the true names and capacities of these fictitiously named defendants when their true names are
24 ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious
25 defendants have participated in the acts alleged in this Complaint.

26 12. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively
27 “DEFENDANTS”), were PLAINTIFF’s employers or persons acting on behalf of PLAINTIFF’s
28 employer, within the meaning of California Labor Code § 558, who violated or caused to be violated,



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

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

9 **JOINT EMPLOYER**

10 14. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce
11 any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

12 15. Section 558 of the California Labor Code provides that “any employer *or other person*
13 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall
15 be subject to a civil penalty...” (*Lab. Code* § 558(a).);

16 16. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person* acting
17 either individually or as an officer, agent, or employee of another person, who pays or causes to be paid
18 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
19 of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

20 17. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that
21 a corporate employer’s owners, officers and directors, are subject to civil penalties for the employer’s
22 failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does
23 not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v.*
24 *Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009
25 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

26 18. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and each
27 of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees
28



1 the appropriate wages as complained of herein and proximately caused the complaints, injuries, and
2 damages alleged herein.

3 19. At all relevant times, each Defendant, whether named or fictitious, was the agent,
4 employee or other person acting on behalf of each other Defendant, and, in participating in the acts
5 alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts
6 of the other.

7 20. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF's
8 wages, working hours, and/or working conditions.

9 21. Each Defendant, whether named or fictitious, acted in all respects pertinent to this action
10 as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or policy, and the
11 acts of each Defendant are legally attributable to the other DEFENDANTS.

12 **JURISDICTION AND VENUE**

13 1. This Court has jurisdiction over this Action pursuant to California Code of Civil
14 Procedure, Section 410.10. This Court has jurisdiction over PLAINTIFF's claims for civil penalties
15 under the Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*

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

21 **THE CONDUCT**

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



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

7 **A. Meal Period Violations**

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

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



1 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
2 for some workdays in which these employees were required by DEFENDANTS to work ten (10) hours
3 of work from time to time. The nature of the work performed by the PLAINTIFF and the AGGRIEVED
4 EMPLOYEES does not qualify for limited and narrowly construed “on-duty” meal period exception.
5 When they were provided with meal periods, PLAINTIFF and other AGGRIEVED EMPLOYEES
6 were, from time to time, required to remain on the premises, on-duty, and on-call. PLAINTIFF and
7 other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
8 and in accordance with DEFENDANTS’ strict corporate policy and practice. DEFENDANTS failed
9 to maintain adequate staffing levels while increasing the production levels for each employee at the
10 busy sites they provided landscape services for.

11 **B. Rest Period Violations**

12 26. From time-to-time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
13 EMPLOYEES were also required from time to time to work in excess of four (4) hours without being
14 provided ten (10) minute rest periods as a result of their rigorous work schedules and DEFENDANTS’
15 inadequate staffing. Further, for the same reasons these employees were denied their first rest periods
16 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
17 time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six
18 (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10)
19 minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided
20 with rest periods, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time,
21 required to remain on the premises, on-duty, and on-call. As a result of their rigorous work schedules
22 and DEFENDANTS’ inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were
23 always denied their proper rest periods by DEFENDANTS and DEFENDANTS’ managers.

24 **C. Regular Rate Violation – Overtime, Sick Pay and Meal and Rest Period Premiums**

25 27. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail
26 to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
27 overtime hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFF and the
28 other AGGRIEVED EMPLOYEES forfeited wages due them for working overtime without

1 compensation at the correct overtime rates, meal and rest period premiums, and sick pay at the correct
2 rates. DEFENDANTS' uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the
3 correct overtime rate for all overtime worked, meal and rest period premiums, and sick pay, in
4 accordance with applicable law is evidenced by DEFENDANTS' business records.

5 28. State law provides that employees must be paid overtime at one-and-one-half times their
6 "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an
7 hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

8 29. The second component of PLAINTIFF'S and other AGGRIEVED EMPLOYEES
9 compensation was DEFENDANTS' cash in lieu of benefits and non-discretionary incentive program
10 that paid PLAINTIFF and other AGGRIEVED EMPLOYEES incentive wages based on their
11 performance for DEFENDANTS. The non-discretionary bonus program provided all employees paid
12 on an hourly basis with bonus and/or commission compensation when the employees met the various
13 performance goals set by DEFENDANTS.

14 30. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
15 where PLAINTIFF and the AGGRIEVED EMPLOYEES worked overtime and earned this non-
16 discretionary bonus, commission, or incentive DEFENDANTS failed to accurately include the non-
17 discretionary bonus compensation and/or incentive paid as part of the employees' "regular rate of pay"
18 and/or calculated all hours worked rather than just all non-overtime hours worked. Further, when
19 calculating the regular rate of pay in order to pay sick pay to PLAINTIFF and the AGGRIEVED
20 EMPLOYEES, DEFENDANTS failed to include the incentive compensation as part of the employees'
21 "regular rate of pay" for purposes of calculating sick pay. Management and supervisors described the
22 incentive/bonus program to potential and new employees as part of the compensation package. As a
23 matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED
24 EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted in a
25 systematic underpayment of overtime and/or sick pay compensation to PLAINTIFF and other
26 AGGRIEVED EMPLOYEES by DEFENDANTS.

27 31. As a matter of law, the incentive and commission compensation received by PLAINTIFFS
28 and other AGGRIEVED EMPLOYEES must be included and correctly calculated into the "regular rate



1 of pay” for purposes of overtime compensation, meal and rest period premiums, and sick pay.
2 DEFENDANTS’ failure to do so has resulted in DEFENDANTS’ systematic underpayment of
3 overtime compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other
4 AGGRIEVED EMPLOYEES. Specifically, California Labor Code Section 246 mandates that paid sick
5 time for non-employees shall be calculated in the same manner as the regular rate of pay for the
6 workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually
7 works overtime in that workweek. DEFENDANT’S conduct, as articulated herein, by failing to include
8 the incentive compensation as part of the “regular rate of pay” for purposes of sick pay compensation
9 was in violation of Cal. Lab. Code § 246.

10 32. In violation of the applicable sections of the California Labor Code and the requirements
11 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
12 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
13 other AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime worked and/or sick pay
14 compensation. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid
15 the payment of the correct overtime compensation and/or sick pay compensation as required by
16 California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage over
17 competitors who complied with the law. To the extent equitable tolling operates to toll claims by the
18 AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted
19 accordingly.

20 **D. Wage Statement Violations**

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



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

8 35. In addition to the violations described above, DEFENDANTS, from time to time, failed
9 to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with
10 Cal. Lab. Code § 226. Specifically, DEFENDANTS failed to include the correct total number of hours
11 worked on the wage statements.

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

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

17 37. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and continue to
18 fail to accurately pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all hours worked.
19 Specifically, DEFENDANT from time-to-time required PLAINTIFF and the other AGGRIEVED
20 EMPLOYEES to perform off-the-clock pre-shift and post-shift work.

21 38. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFF
22 and other AGGRIEVED EMPLOYEES to perform work off-the-clock, including but not limited to,
23 being required to tend to DEFENDANTS' winery and distillery operations during meal breaks. This
24 resulted in PLAINTIFF and other AGGRIEVED EMPLOYEES to have to work while off-the-clock.

25 39. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
26 work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

27 40. DEFENDANTS controlled the work schedules, duties, protocols, applications,
28 assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED EMPLOYEES.





1 41. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
2 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or
3 pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed for all the work
4 they performed, including pre-shift, post shift and during meal period off-the-clock work.

5 42. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt employees,
6 subject to the requirements of the California Labor Code.

7 43. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
8 AGGRIEVED EMPLOYEES of all minimum, regular, overtime, and double time wages owed for the
9 off-the-clock work activities. Because PLAINTIFF and the other AGGRIEVED EMPLOYEES
10 typically worked over 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANTS'
11 policies and practices also deprived them of overtime pay.

12 44. DEFENDANTS knew or should have known that PLAINTIFF and the other
13 AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.

14 45. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due
15 them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent tending
16 to the operational needs of DEFENDANTS' wineries and distilleries while off-the-
17 clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the AGGRIEVED
18 EMPLOYEES wages for all hours worked in accordance with applicable law is evidenced by
19 DEFENDANTS' business records.

20 **FIRST CAUSE OF ACTION**

21 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**

22 **[Cal. Lab. Code §§ 2698, et seq.]**

23 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

24 46. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
25 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

26 47. PAGA is a mechanism by which the State of California itself can enforce state labor laws
27 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
28 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law

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

7 48. PLAINTIFF brings this Representative Action on behalf of the State of California with
8 respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by
9 DEFENDANTS during the PAGA PERIOD.

10 49. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the
11 AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the meaning of
12 Labor Code Section 2699(c).

13 50. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
14 PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil action to
15 recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

16 51. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
17 Section 2699.3. By certified letter, return receipt requested, dated November 1, 2021, PLAINTIFF
18 gave written notice to the Labor and Workforce Development Agency ("LWDA") and to
19 DEENDANTS of the specific provisions of the Labor Code alleged to have been violated, including
20 the facts and theories to support the alleged violations. (See Exhibit 1).

21 52. As of January 5, 2022, more than sixty-five (65) days after serving the LWDA with notice
22 of DEFENDANTS' violations, the LWDA has not provided any notice by certified mail of its intent to
23 investigate the DEFENDANTS' alleged violations as mandated by Labor Code Section
24 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may
25 commence and is authorized to pursue this cause of action.

26 53. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to the
27 California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled the statute
28 of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of



1 limitation and repose for civil causes of action that are 180 days or less, of (b) October 1, 2020 for
2 statutes of limitation and repose for civil causes of action that exceed 180 days.

3 54. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
4 EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201,
5 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5,
6 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, in the following amounts:

7 a. For violation of Labor Code Sections 201, 202, 203, and 204, one
8 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period
9 for the initial violation and two hundred dollars (\$200) for AGGRIEVED
10 EMPLOYEE per pay period for each subsequent violation [penalty per
11 Labor Code Section 2699(f)(2)];

12 b. For violations of Labor Code Section 226(a), a civil penalty in the
13 amount of two hundred fifty dollars (\$250) for each AGGRIEVED
14 EMPLOYEE for any initial violation and one thousand dollars for each
15 subsequent violation [penalty per Labor Code Section 226.3];

16 c. For violations of Labor Code Sections 204, a civil penalty in the
17 amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE
18 for any initial violation and two hundred dollars (\$200) for AGGRIEVED
19 EMPLOYEE for each subsequent violation [penalty per Labor Code
20 Section 210];

21 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil
22 penalty in the amount of fifty dollars (\$50) for each underpaid
23 AGGRIEVED EMPLOYEE for the initial violation and hundred dollars
24 (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent
25 violation [penalty per Labor Code Section 558];

26 e. For violations of Labor Code Section 2269(a), a civil penalty in the
27 amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE
28 per violation in an initial citation and one thousand dollars (\$1,000) per





1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 226.3];

f. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section].

2. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney’s fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

- (a) For reasonable attorney’s fees and costs of suit to the extent permitted by law, including pursuant to Labor Code § 2699, *et seq.*;
- (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act; and
- (c) For such other relief as the Court deems just and proper.

Dated: January 6, 2022

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

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

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

Dated: January 6, 2022

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

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1



5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: 619-599-8292
Fax: 619-599-8291
Toll Free: 1-888-498-6999
www.jcl-lawfirm.com
Jean-Claude Lapuyade, Esq.
jlapuyade@jcl-lawfirm.com

November 1, 2021

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

O'NEILL BEVERAGES CO. LLC

c/o JEFFREY BRYAN O'NEILL

8418 S. Lac Jac Ave.

Parlier, CA 93648

Sent Via Certified Mail & Return Receipt No. 7021 0350 0000 8465 3264

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

This office represents LUTHER RODDY (“Plaintiff”) and other aggrieved employees in a proposed class and representative action against O’NEILL BEVERAGES CO. LLC (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendant in California from January of 2020 to August of 2021. Plaintiff was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

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

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees and Class Members

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

Very truly yours,
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

Enclosure (1)

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar # 290572)
5440 Morehouse Drive Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland Hom (State Bar #327243)
5440 Morehouse Drive Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

LUTHER RODDY, an individual, on behalf of himself and on behalf of all persons similarly situated,

Plaintiff,

v.

O'NEILL BEVERAGES CO. LLC, a Delaware Limited Liability Company; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

- 1 VIOLATION OF CAL. LAB. CODE § 226;
2 7) FAILURE TO PROVIDE WAGES WHEN
3 DUE IN VIOLATION OF CAL. LAB.
4 CODE §§ 201, 202 AND 203;
5 8) UNPAID SICK PAY IN VIOLATION OF
6 CAL. LAB. CODE § 246;
7 9) WRONGFUL TERMINATION IN
8 VIOLATION OF PUBLIC POLICY; and
9 10) VIOLATION OF GOVT. CODE § 12940 –
10 RACIAL DISCRIMINATION

11 **DEMAND FOR A JURY TRIAL**

12 Plaintiff LUTHER RODDY (“PLAINTIFF”), an individual, on behalf of himself and
13 all other similarly situated current and former employees, alleges on information and belief, except
14 for his own acts and knowledge which are based on personal knowledge, the following:

15 **THE PARTIES**

16 1. Defendant O’NEILL BEVERAGES CO. LLC (“DEFENDANT”) is a Delaware
17 limited liability company that at all relevant times mentioned herein conducted and continues to
18 conduct substantial and regular business in the state of California, county of Marin, and owns,
19 operates, and/or manages wineries and distilleries.

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

3. The agents, servants, and/or employees of the Defendants and each of them acting
on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as
the agent, servant and/or employee of the Defendants, and personally participated in the conduct

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

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

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

17 6. PLAINTIFF was employed by DEFENDANT in California from January of 2020
18 to August of 2021 and was at all times classified by DEFENDANT as a non-exempt employee,
19 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
20 minimum and overtime wages due for all time worked.

21 7. PLAINTIFF brings this Class Action on behalf of himself and a California class,
22 defined as all persons who are or previously were employed by DEFENDANT in California and
23 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
24 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
25 by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of the
26 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

1 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
2 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
3 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
4 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
5 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
6 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
7 other members of the CALIFORNIA CLASS who have been economically injured by
8 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
9 relief.

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

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

18 **JURISDICTION AND VENUE**

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

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

28 ///

1 **THE CONDUCT**

2 13. In violation of the applicable sections of the California Labor Code and the
3 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
4 matter of company policy, practice and procedure, intentionally, knowingly and systematically
5 failed to provide legally compliant meal and rest periods, failed to accurately compensate
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
7 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
8 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
9 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
10 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
11 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
12 Members for business expenses, and failed to issue to PLAINTIFF and the members of the
13 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
14 applicable hourly rates in effect during the pay periods and the corresponding amount of time
15 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
16 purposefully avoid the accurate and full payment for all time worked as required by California
17 law which allows DEFENDANTS to illegally profit and gain an unfair advantage over
18 competitors who comply with the law. To the extent equitable tolling operates to toll claims by
19 the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted
20 accordingly.

21 **A. Meal Period Violations**

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

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

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

27
28 ///

1 **B. Rest Period Violations**

2 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
3 CALIFORNIA CLASS members were also required from time to time to work in excess of four
4 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
5 requirements, being required to tend to DEFENDANTS’ winery and distillery operations at all
6 times, , and DEFENDANTS’ inadequate staffing. Further, for the same reasons these employees
7 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least
8 two (2) to four (4) hours from time to time, 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 from time to time, and a
10 first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
11 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
12 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or
13 on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
14 hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS’
15 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
16 time denied their proper rest periods by DEFENDANTS and DEFENDANTS’ managers.

17 **C. Regular Rate Violation – Overtime, Sick Pay and Meal and Rest Period Premiums**

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

27 18. State law provides that employees must be paid overtime at one-and-one half times
28 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were

1 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
2 employee's performance.

3 19. The second component of PLAINTIFF's and other CALIFORNIA CLASS
4 Member's compensation was DEFENDANTS' non-discretionary incentive program that paid
5 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
6 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
7 paid on an hourly basis with bonus, and/or commission compensation when the employees met
8 the various performance goals set by DEFENDANTS. Additionally, DEFENDANT gave
9 PLAINTIFF and the CALIFORNIA CLASS received bonuses when the employees met various
10 performance goals set by DEFENDANT.

11 20. However, from-time-to-time, when calculating the regular rate of pay, in those pay
12 periods where PLAINTIFF and the CALIFORNIA CLASS Members worked overtime and
13 earned this non-discretionary bonus, commission, or incentive DEFENDANTS failed to
14 accurately include the non-discretionary bonus compensation and/or incentive paid as part of the
15 employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-
16 overtime hours worked. Further, when calculating the regular rate of pay in order to pay sick pay
17 to PLAINTIFF and the CALIFORNIA CLASS, DEFENDANTS failed to include the incentive
18 compensation as part of the employees' "regular rate of pay" for purposes of calculating sick pay.
19 Management and supervisors described the incentive/bonus program to potential and new
20 employees as part of the compensation package. As a matter of law, the incentive compensation
21 received by PLAINTIFF and other CALIFORNIA CLASS Members must be included in the
22 "regular rate of pay." The failure to do so has resulted in a systematic underpayment of overtime
23 and/or sick pay compensation to PLAINTIFF and other CALIFORNIA CLASS Members by
24 DEFENDANTS.

25 21. As a matter of law, the incentive and commission compensation received by
26 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly
27 calculated into the "regular rate of pay" for purposes of overtime compensation, meal and rest
28 period premiums, and sick pay. DEFENDANTS' failure to do so has resulted in DEFENDANTS'

1 systematic underpayment of overtime compensation, meal and rest period premiums, and sick pay
2 to PLAINTIFF and other CALIFORNIA CLASS members. Specifically, California Labor Code
3 Section 246 mandates that paid sick time for non-employees shall be calculated in the same
4 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid
5 sick time, whether or not the employee actually works overtime in that workweek.
6 DEFENDANT’S conduct, as articulated herein, by failing to include the incentive compensation
7 as part of the “regular rate of pay” for purposes of sick pay compensation was in violation of Cal.
8 Lab. Code § 246.

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

19 **D. Wage Statement Violations**

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

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

9 25. In addition to the violations described above, DEFENDANTS, from time to time,
10 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
11 that comply with Cal. Lab. Code § 226. Specifically, DEFENDANTS failed to include the correct
12 total number of hours worked on the wage statements.

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

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

18 27. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
19 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
20 CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required
21 PLAINTIFF and the other members of the CALIFORNIA CLASS to perform off-the-clock pre-
22 shift and post-shift work.

23 28. During the CLASS PERIOD, from time-to-time DEFENDANTS required
24 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work off-the-clock,
25 including but not limited to, being required to tend to DEFENDANTS' winery and distillery
26 operations during meal breaks. This resulted in PLAINTIFF and other members of the
27 CALIFORNIA CLASS to have to work while off-the-clock.

28

1 29. DEFENDANTS directed and directly benefited from the uncompensated off-the-
2 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

3 30. DEFENDANTS controlled the work schedules, duties, protocols, applications,
4 assignments, and employment conditions of PLAINTIFF and the other members of the
5 CALIFORNIA CLASS.

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

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

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

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

20 35. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
21 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
22 for the time spent tending to the operational needs of DEFENDANTS' wineries and distilleries
23 while off-the-clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and
24 the members of the CALIFORNIA CLASS wages for all hours worked in accordance with
25 applicable law is evidenced by DEFENDANTS' business records.

26 **F. Plaintiff's Individual Claims**

27 36. On August 31, 2021, PLAINTIFF was terminated from his employment.
28 PLAINTIFF is African-American.

1 37. PLAINTIFF is informed and believes, and upon such information and belief
2 alleges, that, during PLAINTIFF's employment with DEFENDANT and at the time of his
3 termination, DEFENDANT'S business in particular is comprised of employees who are not
4 African-American. PLAINTIFF is African-American. PLAINTIFF never felt that he was
5 accepted by DEFENDANT and some of his fellow employees because of his race.

6 38. PLAINTIFF is informed and believes, and upon such information and belief
7 alleges, that, during PLAINTIFF's employment with DEFENDANT and at the time of his
8 termination, DEFENDANT hired and treated its non-African-American employees far better than
9 DEFENDANT treated PLAINTIFF, and solely on the basis that PLAINTIFF is African-
10 American.

11 39. Specifically, in or around March 12, 2021, PLAINTIFF was singled out at the
12 workplace when DEFENDANT'S Manager Danny Rubalcava and Supervisor Neil Hilleary
13 demanded that PLAINTIFF stay away from a specific location at DEFENDANT'S workplace.
14 PLAINTIFF is informed and believes, and upon such information and belief, alleges that,
15 DEFENDANT'S demands were made to PLAINTIFF on the basis that PLAINTIFF is African-
16 American. Following the March 12, 2021 incident, DEFENDANT suspended PLAINTIFF
17 without pay, escorted off the premises, and ordered to remain off the premises until after his
18 suspension. On March 17, 2021, PLAINTIFF returned to work.

19 40. In or around August of 2021, PLAINTIFF was reprimanded and suspended for a
20 mistake regarding the wrong glasses for use at DEFENDANT's workplace. However, the mistake
21 was of no fault of PLAINTIFF. Despite the foregoing, DEFENDANT suspended PLAINTIFF on
22 August 24, 2021. Shortly thereafter, on August 31, 2021, PLAINTIFF was terminated from his
23 employment with DEFENDANT.

24 41. PLAINTIFF is informed and believes, and upon such information and belief
25 alleges, that, DEFENDANT's conduct in terminating him was part of a pattern of behavior by
26 DEFENDANT aimed at removing African-American employees like PLAINTIFF.
27
28

1 42. PLAINTIFF filed a complaint with the California Department of Fair Employment
2 and Housing and received a “right to sue” letter on [REDACTED] thereby exhausting his
3 administrative remedies.

4 **G. CLASS ACTION ALLEGATIONS**

5 43. PLAINTIFF brings the First through Eighth Causes of Action as a class action
6 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS’ current
7 and former non-exempt California employees (“CALIFORNIA CLASS”) during the period
8 beginning four years prior to the filing of the Complaint and ending on a date determined by the
9 Court (“CLASS PERIOD”).

10 44. 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 to reimburse for business expenses, failed compensate
14 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
15 required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

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

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

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

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

25 47. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
26 a result of DEFENDANTS' conduct and actions alleged herein.

27 48. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
28 the same interests as the other members of the class.

1 49. PLAINTIFF will fairly and adequately represent and protect the interests of the
2 CALIFORNIA CLASS Members.

3 50. PLAINTIFF retained able class counsel with extensive experience in class action
4 litigation.

5 51. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
6 interests of the other CALIFORNIA CLASS Members.

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

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

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

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

1 55. Class treatment provides manageable judicial treatment calculated to bring an
2 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
3 the conduct of DEFENDANTS.

4 **FIRST CAUSE OF ACTION**

5 **Unlawful Business Practices**

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

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

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

11 57. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
12 Code § 17021.

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

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

25 59. By the conduct alleged herein, DEFENDANT has engaged and continues to
26 engage in a business practice which violates California law, including but not limited to, the
27 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
28 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,

1 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
2 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
3 unfair competition, including restitution of wages wrongfully withheld.

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

9 61. By the conduct alleged herein, DEFENDANT's practices were deceptive and
10 fraudulent in that DEFENDANT's 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 and, due to a systematic business practice that cannot be justified, pursuant to the
13 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
14 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
15 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

1 65. 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 66. 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 67. 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 68. 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 69. 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 70. 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 71. 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 72. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
11 for DEFENDANT’S willful and intentional violations of the California Labor Code and the
12 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate
13 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

14 73. 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 74. 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 lesser wage than
18 the minimum so fixed is unlawful.

19 75. 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 76. 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 worked. 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 77. 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 denied accurate compensation to PLAINTIFF
2 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

3 78. In committing these violations of the California Labor Code, DEFENDANT
4 inaccurately calculated the amount of 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 79. 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 80. During the CLASS PERIOD, PLAINTIFF and the other members of the
13 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
14 failure to pay all earned wages.

15 81. 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 82. DEFENDANT knew or should have known that PLAINTIFF and the other
21 members of the CALIFORNIA CLASS are 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 corporate 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 83. 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 84. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
8 request 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 §§ 510, 1194 and 1198)**

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

22 85. 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 86. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
26 for DEFENDANT's willful and intentional violations of the California Labor Code and the
27 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
28

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

3 87. 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 88. Cal. Lab. Code § 510 further provides that employees in California shall not be
6 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
7 unless they receive additional compensation beyond their regular wages in amounts specified by
8 law.

9 89. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
10 including minimum wage and overtime compensation and interest thereon, together with the costs
11 of 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 90. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
14 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
15 they worked, including overtime work.

16 91. DEFENDANT's 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 92. In committing these violations of the California Labor Code, DEFENDANT
24 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
25 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT 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 93. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,
2 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
3 compensation for overtime worked.

4 94. 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 the
6 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
7 other members of the CALIFORNIA CLASS were 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 DEFENDANT’s violations of non- negotiable, non-waivable rights provided by the State of
11 California.

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

15 96. DEFENDANT failed to accurately pay the 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 required to work,
19 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as
20 evidenced by DEFENDANT’s business records and witnessed by employees.

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

26 98. DEFENDANTS knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
28 DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
2 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
3 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

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

23
24
25
26
27 ///
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTH CAUSE OF ACTION

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

101. 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.

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

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

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

4 **FIFTH CAUSE OF ACTION**

5 **Failure To Provide Required Rest Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

28

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

4 **SIXTH CAUSE OF ACTION**

5 **Failure To Provide Accurate Itemized Statements**

6 (Cal. Lab. Code §§ 226)

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

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

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

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

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

3 111. When DEFENDANT did not accurately record PLAINTIFF's and other
4 CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, DEFENDANT
5 violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement
6 in writing that properly and accurately itemizes all wages, and missed meal and rest periods and
7 reporting time wages owed to PLAINTIFF and the other members of the CALIFORNIA CLASS
8 and thereby also failed to set forth the correct wages earned by the employees. During the CLASS
9 PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the
10 CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately
11 show, among other things, (1) total number of hours worked, (2) net wages earned, (3) gross
12 wages earned; and (4) all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate by the employee in violation of
14 California Labor Code Section 226(a). In addition to the foregoing, DEFENDANTS failed to
15 provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS
16 that complied with the requirements of California Labor Code Section 226.

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

28 ///

1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

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

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

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

9 As used in this article:

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

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

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

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

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

1 117. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
2 Members' employment contract.

3 118. Cal. Lab. Code § 203 provides:

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

9 119. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
10 terminated, and DEFENDANT has not tendered payment of wages to these employees who were
11 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
12 required by law.

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

18 **EIGHTH CAUSE OF ACTION**

19 **UNPAID SICK PAY**

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

21 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all DEFENDANTS)**

22 121. 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.

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

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

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

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

24 **NINTH CAUSE OF ACTION**

25 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

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

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

1 127. PLAINTIFF's wrongful termination on or about August 31, 2021 was for a
2 pretextual reason(s) to disguise DEFENDANT's unlawful employment practices directed at
3 PLAINTIFF.

4 128. Within the State of California there exists a substantial and fundamental public
5 policy, set forth in the California Government Code §12900 et seq., which forbids racial
6 harassment/discrimination, retaliation, and wrongful termination. Unlawful harassment includes
7 the right to be free from unwanted, offensive harassment, and the right to protest such conduct
8 without fear of retaliation or further harm. This public policy of the state is one that benefits the
9 public at large and guarantees the rights of an employee to perform their work free from racial
10 harassment/discrimination/retaliation.

11 129. The motivating reason(s) for PLAINTIFF's termination was racial
12 harassment/discrimination and PLAINTIFF's protests and/or resistance thereof. PLAINTIFF's
13 discharge from his position of employment was in violation of the public policies of the State of
14 California.

15 130. As a result of DEFENDANT's actions, PLAINTIFF has suffered substantial
16 losses in earnings and employment benefits and emotional distress in an amount to be determined
17 according to proof at trial.

18 131. In doing the acts herein alleged, DEFENDANT acted with malice and oppression,
19 and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is entitled to exemplary
20 and punitive damages from DEFENDANT in an amount to be determined to punish
21 DEFENDANT and to deter such wrongful conduct in the future.

22 132. PLAINTIFF was harmed by DEFENDANT'S wrongful and illegal termination of
23 his employment.

24 133. The wrongful termination of the employment of PLAINTIFF was and is a
25 substantial factor causing harm to PLAINTIFF.

26 134. On _____, PLAINTIFF filed a complaint with the Department of Fair
27 Employment & Housing ("DFEH"), and received an immediate Right to Sue that same day. (See
28 Exhibit #_).

1 **TENTH CAUSE OF ACTION**

2 **VIOLATION OF GOVERNMENT CODE §12940 et seq. – RACIAL DISCRIMINATION**

3 **(Alleged by PLAINTIFF and against all Defendants)**

4 135. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
5 herein, the prior paragraphs of this Complaint.

6 136. PLAINTIFF was employed by DEFENDANT.

7 137. DEFENDANT is an employer covered by Government Code §12940 *et seq.*

8 138. PLAINTIFF was terminated from his employment and/or suffered other adverse
9 employment actions.

10 139. PLAINTIFF's race was a substantial motivating reason(s) for his termination and
11 other adverse employment actions.

12 140. As a result of DEFENDANT's conduct, PLAINTIFF has suffered substantial
13 losses in earnings and employment benefits and emotional distress in an amount to be determined
14 according to proof at trial.

15 141. In doing the acts herein alleged, DEFENDANT acted with malice and oppression,
16 and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is entitled to exemplary
17 and punitive damages from DEFENDANT in an amount to be punish DEFENDANT and to deter
18 such wrongful conduct in the future.

19 **PRAYER FOR RELIEF**

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

22 1. On behalf of the CALIFORNIA CLASS:

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

of the CALIFORNIA CLASS; and

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 and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;

c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

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

e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On Plaintiff’s individual claims:

a. For all special damages which were sustained as a result of DEFENDANT’s conduct, including but not limited to, back pay, front pay, lost compensation and job benefits that PLAINTIFF would have received but for the practices of DEFENDANT.

b. For all exemplary damages, according to proof, which were sustained as a result of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEFENDANT's conduct.

- c. An award of interest, including prejudgment interest at the legal rate.
 - d. Such other and further relief as the Court deems just and equitable.
 - e. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
4. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and
 - c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: October __, 2021

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: October __, 2021

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF