

**SUMMONS
(CITACION JUDICIAL)**

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

PERFORMANCE FOOD GROUP, INC., a Colorado corporation; and
DOES 1-50, Inclusive,

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

MARCOS RODRIGUEZ, an individual, on behalf of himself and on
behalf of all persons similarly situated,

ELECTRONICALLY FILED
Superior Court of California
County of Alameda
09/01/2022
Chad Finke, Executive Officer / Clerk of the Court
By: A. Linhares Deputy

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es):
Alameda Superior Court - Hayward Hall of Justice
24405 Amador Street
Hayward, CA 94544

CASE NUMBER: **22CV017191**
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (858) 599-8291
JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 09/01/2022 Chad Finke, Executive Officer / Clerk of the Court Clerk, by A. Linhares, Deputy
(Fecha) (Secretario) (Adjunto)

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

NOTICE TO THE PERSON SERVED: You are served

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



JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
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ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

09/01/2022 at 04:18:20 PM

By: Angela Linhares,
Deputy Clerk

ZAKAY LAW GROUP, APLC

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

MARCOS RODRIGUEZ, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

PERFORMANCE FOOD GROUP, INC., a
Colorado corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No: **22CV017191**

CLASS ACTION COMPLAINT FOR:

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

6) FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE § 226;
7)FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN
VIOLATION OF CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant PERFORMANCE FOOD GROUP, INC. (“DEFENDANT”) is a Colorado corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Alameda, and is a major distributor of food products.

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

3. The agents, servants, and/or employees of the Defendants and each of them acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all

1 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
3 Defendants' agents, servants and/or employees.

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

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

15 6. PLAINTIFF has been employed by DEFENDANT in California since August of
16 2021 and has at all times been classified by DEFENDANT as a non-exempt employee, paid on
17 an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
18 and overtime wages due for all time worked.

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

25 8. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
26 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
27 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
28 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged

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

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

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

16 **JURISDICTION AND VENUE**

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

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

26
27 ///

THE CONDUCT

1
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, and DEFENDANT'S understaffing,

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

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

25 **B. Rest Period Violations**

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

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

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

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

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

26 19. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
27 Member’s compensation was DEFENDANTS’ non-discretionary incentive program that paid
28 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their

1 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
2 paid on an hourly basis with bonus, and/or commission compensation when the employees met
3 the various performance goals set by DEFENDANTS. Additionally, DEFENDANT gave
4 PLAINTIFF and the CALIFORNIA CLASS received bonuses when the employees met various
5 performance goals set by DEFENDANT.

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

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

1 DEFENDANT’S conduct, as articulated herein, by failing to include the incentive compensation
2 as part of the “regular rate of pay” for purposes of sick pay compensation was in violation of Cal.
3 Lab. Code § 246.

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

14 **D. Wage Statement Violations**

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

23 24. From time to time during the CLASS PERIOD, when PLAINTIFF and other
24 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
25 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
26 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
27 wage statements which failed to show, among other things, the total hours worked and all
28 applicable hourly rates in effect during the pay period and the corresponding amount of time

1 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
2 periods.

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

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

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

12 27. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
13 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
14 CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required
15 PLAINTIFF and the other members of the CALIFORNIA CLASS to perform off-the-clock pre-
16 shift and post-shift work.

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

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

24 30. DEFENDANTS controlled the work schedules, duties, protocols, applications,
25 assignments, and employment conditions of PLAINTIFF and the other members of the
26 CALIFORNIA CLASS.

27 31. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
28 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to

1 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
2 wages earned and owed for all the work they performed, including pre-shift, post shift and during
3 meal period off-the-clock work.

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

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

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

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

19 **F. Unreimbursed Business Expenses**

20 36. DEFENDANT as a matter of corporate policy, practice, and procedure,
21 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
22 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
23 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
24 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
25 are required to indemnify employees for all expenses incurred in the course and scope of their
26 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
27 employee for all necessary expenditures or losses incurred by the employee in direct consequence
28 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,

1 even though unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful."

3 37. In the course of their employment, DEFENDANT required PLAINTIFF and other
4 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell
5 phones as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
6 CALIFORNIA CLASS Members were required to use their personal cell phones in order to
7 perform work related tasks. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF
8 and other CALIFORNIA CLASS Members for the personal expenses incurred for the use of their
9 personal cell phones. As a result, in the course of their employment with DEFENDANT, the
10 PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed business
11 expenses that included, but were not limited to, costs related to the use of their personal cell
12 phones, all on behalf of and for the benefit of DEFENDANT.

13 **G. CLASS ACTION ALLEGATIONS**

14 38. PLAINTIFF bring this Class Action on behalf of himself, and a California class
15 defined as all persons who are or previously were employed by DEFENDANT in California and
16 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
17 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
18 by the Court (the "CLASS PERIOD").

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

25 40. The members of the class are so numerous that joinder of all class members is
26 impractical.

27 41. Common questions of law and fact regarding DEFENDANTS' conduct, including
28 but not limited to, the off-the-clock work, unpaid mean and rest period premiums, failure to

1 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
2 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
3 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
4 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
5 minimum wage and overtime, exist as to all members of the class and predominate over any
6 questions affecting solely any individual members of the class. Among the questions of law and
7 fact common to the class are:

- 8 a. Whether DEFENDANTS maintained legally compliant meal period policies and
9 practices;
- 10 b. Whether DEFENDANTS maintained legally compliant rest period policies and
11 practices;
- 12 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
13 CLASS Members accurate premium payments for missed meal and rest periods;
- 14 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
15 CLASS Members accurate overtime wages;
- 16 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
17 CLASS Members accurate sick pay;
- 18 f. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
19 CLASS Members at least minimum wage for all hours worked;
- 20 g. Whether DEFENDANTS issued legally compliant wage statements;
- 21 h. Whether DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA
22 CLASS Members for all business expenses;
- 23 i. Whether DEFENDANTS committed an act of unfair competition by
24 systematically failing to record and pay PLAINTIFF and the other members of the
25 CALIFORNIA CLASS for all time worked;
- 26 j. Whether DEFENDANTS committed an act of unfair competition by
27 systematically failing to record all meal and rest breaks missed by PLAINTIFF
28 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed

1 the benefit of this work, required employees to perform this work and permits or
2 suffers to permit this work;

3 k. Whether DEFENDANTS committed an act of unfair competition in violation of
4 the UCL, by failing to provide the PLAINTIFF and the other members of the
5 CALIFORNIA CLASS with the legally required meal and rest periods.

6 42. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
7 a result of DEFENDANTS' conduct and actions alleged herein.

8 43. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
9 the same interests as the other members of the class.

10 44. PLAINTIFF will fairly and adequately represent and protect the interests of the
11 CALIFORNIA CLASS Members.

12 45. PLAINTIFF retained able class counsel with extensive experience in class action
13 litigation.

14 46. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
15 interests of the other CALIFORNIA CLASS Members.

16 47. There is a strong community of interest among PLAINTIFF and the members of
17 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
18 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
19 sustained.

20 48. The questions of law and fact common to the CALIFORNIA CLASS Members
21 predominate over any questions affecting only individual members, including legal and factual
22 issues relating to liability and damages.

23 49. A class action is superior to other available methods for the fair and efficient
24 adjudication of this controversy because joinder of all class members is impractical. Moreover,
25 since the damages suffered by individual members of the class may be relatively small, the
26 expense and burden of individual litigation makes it practically impossible for the members of the
27 class individually to redress the wrongs done to them. Without class certification and
28 determination of declaratory, injunctive, statutory and other legal questions within the class

1 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
2 create the risk of:

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

10 50. Class treatment provides manageable judicial treatment calculated to bring an
11 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
12 the conduct of DEFENDANTS.

13 **FIRST CAUSE OF ACTION**

14 **Unlawful Business Practices**

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

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

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

20 52. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
21 Code § 17021.

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

26 Any person who engages, has engaged, or proposes to engage in unfair competition
27 may be enjoined in any court of competent jurisdiction. The court may make such
28 orders or judgments, including the appointment of a receiver, as may be necessary

1 to prevent the use or employment by any person of any practice which constitutes
2 unfair competition, as defined in this chapter, or as may be necessary to restore to
3 any person in interest any money or property, real or personal, which may have
4 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
5 17203).

6 54. By the conduct alleged herein, DEFENDANT has engaged and continues to
7 engage in a business practice which violates California law, including but not limited to, the
8 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
9 including Sections 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802 for which
10 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code
11 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
12 competition, including restitution of wages wrongfully withheld.

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

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

25 57. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
26 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
27 other members of the CALIFORNIA CLASS to be underpaid during their employment with
28 DEFENDANT.

1 58. By the conduct alleged herein, DEFENDANT’s practices were also unfair and
2 deceptive in that DEFENDANT’s uniform policies, practices and procedures failed to provide
3 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
4 as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

1 64. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
2 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
3 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
4 engaging in any unlawful and unfair business practices in the future.

5 65. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
6 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
7 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
8 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
9 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
10 and economic harm unless DEFENDANT is restrained from continuing to engage in these
11 unlawful and unfair business practices.

12 **SECOND CAUSE OF ACTION**

13 **Failure To Pay Minimum Wages**

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

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

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

19 67. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
20 for DEFENDANT’S willful and intentional violations of the California Labor Code and the
21 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate
22 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

25 69. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
26 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
27 the minimum so fixed is unlawful.
28

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

3 71. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
4 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
5 worked. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and
6 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
7 CALIFORNIA CLASS.

8 72. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
9 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
10 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
11 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

12 73. In committing these violations of the California Labor Code, DEFENDANT
13 inaccurately calculated the amount of time worked and consequently underpaid the actual time
14 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
15 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
16 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
17 laws and regulations.

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

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

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

1 77. DEFENDANT knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS are under-compensated for their time worked.
3 DEFENDANT systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice
5 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
6 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
7 for their time worked.

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

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

27
28 ///

1 **THIRD CAUSE OF ACTION**

2 **Failure To Pay Overtime Compensation**

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

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

5 80. 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 81. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
9 for DEFENDANT’s willful and intentional violations of the California Labor Code and the
10 Industrial Welfare Commission requirements for DEFENDANT’s failure to pay these employees
11 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
12 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

23 85. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
24 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
25 they worked, including overtime work.

26 86. 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 implementing a uniform policy and practice that failed to accurately record overtime worked by

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

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

11 88. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
12 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
13 compensation for overtime worked.

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

22 90. During the CLASS PERIOD, PLAINTIFF and the other members of the
23 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
24 constituting a failure to pay all earned wages.

25 91. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
26 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
27 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
28 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,

1 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as
2 evidenced by DEFENDANT's business records and witnessed by employees.

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

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

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

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

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

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

26 98. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
27 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
28 who were not provided a meal period, in accordance with the applicable Wage Order, one

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

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

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

25 102. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
26 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
27 who were not provided a rest period, in accordance with the applicable Wage Order, one
28

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code §§ 226)**

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

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

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

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

106. When DEFENDANT did not accurately record PLAINTIFF’s and other
CALIFORNIA CLASS Members’ wages, and missed meal and rest breaks, DEFENDANT
violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement
in writing that properly and accurately itemizes all wages, and missed meal and rest periods and

1 reporting time wages owed to PLAINTIFF and the other members of the CALIFORNIA CLASS
2 and thereby also failed to set forth the correct wages earned by the employees. During the CLASS
3 PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the
4 CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately
5 show, among other things, (1) total number of hours worked, (2) net wages earned, (3) gross
6 wages earned; and (4) all applicable hourly rates in effect during the pay period and the
7 corresponding number of hours worked at each hourly rate by the employee in violation of
8 California Labor Code Section 226(a). In addition to the foregoing, DEFENDANTS failed to
9 provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS
10 that complied with the requirements of California Labor Code Section 226.

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

22 **SEVENTH CAUSE OF ACTION**

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

24 **(Cal. Lab. Code §§ 2802)**

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

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

1 109. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

6 110. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
7 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
8 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
9 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members
10 for expenses which included, but were not limited to, personal expenses incurred for the use of
11 personal cell phones all on behalf of and for the benefit of DEFENDANT. Specifically,
12 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use
13 their own cell phones to execute their essential job duties on behalf of DEFENDANT.
14 DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and
15 the CALIFORNIA CLASS members for expenses resulting from the use of personal cell phones
16 for DEFENDANT within the course and scope of their employment for DEFENDANT. These
17 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by
18 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
19 necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,
20 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
21 members for these expenses as an employer is required to do under the laws and regulations of
22 California.

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

27 **PRAYER FOR RELIEF**

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

1. On behalf of the CALIFORNIA CLASS:

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

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3. On all claims:

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

DATED: September 1, 2022

JCL LAW FIRM, APC

By:  _____

Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: September 1, 2022

JCL LAW FIRM, APC

By:  _____

Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF