

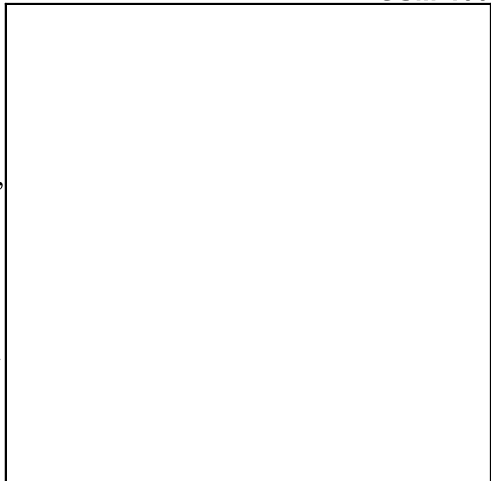
SUMMONS (CITACION JUDICIAL)

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

RADIANT SERVICES CORP., a California corporation; and DOES 1-50, Inclusive,

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

STEVE MARTINEZ, an individual, on behalf of himself and on behalf of all persons similarly situated,



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):
Los Angeles Superior Court - Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso): **22STCV23115**

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

Sherri R. Carter Executive Officer / Clerk of Court
J. Covarrubias, Deputy
Clerk, by _____, (Adjunto)
(Secretario)

DATE: **07/18/2022**
(Fecha)

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



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

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
Sydney Castillo Johnson (State Bar #343881)
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
scastillo@jcl-lawfirm.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

STEVE MARTINEZ, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

RADIANT SERVICES CORP., a California
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: **22STCV23115**

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 PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
 - 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802;
 - 9) VIOLATION OF CONSTITUTIONAL RIGHT TO PRIVACY; and
 - 10) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.

DEMAND FOR A JURY TRIAL

Plaintiff STEVE MARTINEZ (“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 RADIANT SERVICES CORP. (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. DEFENDANT owns, operates, and/or manages a full-service laundry and dry-cleaning facility that provides linen services to hotels and hospitality companies the state of California, including the county of Los Angeles, where PLAINTIFF worked.

3. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANT 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 DEFENDANT 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.

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

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

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

20 7. PLAINTIFF has been employed by DEFENDANT in California since December
21 2021 and at all times has been classified by DEFENDANT as a non-exempt employee, paid on
22 an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
23 and overtime wages due for all time worked.

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

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

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

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

20 **JURISDICTION AND VENUE**

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

25 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
26 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
27 the CALIFORNIA CLASS across California, including in this County, and committed the
28 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

///
///

THE CONDUCT

1
2 14. In violation of the applicable sections of the California Labor Code and the
3 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT 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. DEFENDANT's 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 DEFENDANT to illegally profit and gain an unfair advantage over competitors
18 who comply with the law. To the extent equitable tolling operates to toll claims by the
19 CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted
20 accordingly.

21 **A. Meal Period Violations**

22 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
23 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, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
27 without paying them for all the time they were under DEFENDANT's control. Specifically, as a
28 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,

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

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

23 **B. Rest Period Violations**

24 17. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
25 CALIFORNIA CLASS members were also required from time to time to work in excess of four
26 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
27 requirements and DEFENDANT's inadequate staffing. Further, for the same reasons these
28 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked

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

10 **C. Unreimbursed Business Expenses**

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

22 19. In the course of their employment, DEFENDANT required PLAINTIFF and other
23 CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance
24 of their job duties as employees for DEFENDANT. But for the use of their own personal cell
25 phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential
26 job duties. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other
27 CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in the
28 course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA

1 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related
2 to the use of their personal cell phones, all on behalf of and for the benefit of DEFENDANT.

3 **D. Wage Statement Violations**

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

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

20 22. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
21 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
22 Cal. Lab. Code § 226.

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

27
28 ///

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

2 24. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
3 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
4 CLASS for all hours worked.

5 25. During the CLASS PERIOD, from time-to-time DEFENDANT required
6 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
7 work, including but not limited to, undergoing pre-shift COVID-19 health screenings from time
8 to time off-the-clock. This resulted in PLAINTIFF and other members of the CALIFORNIA
9 CLASS to have to work while off-the-clock.

10 26. DEFENDANT directed and directly benefited from the uncompensated off-the-
11 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

12 27. DEFENDANT controlled the work schedules, duties, protocols, applications,
13 assignments, and employment conditions of PLAINTIFF and the other members of the
14 CALIFORNIA CLASS.

15 28. DEFENDANT was able to track the amount of time PLAINTIFF and the other
16 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
17 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
18 wages earned and owed for all the work they performed.

19 29. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
20 exempt employees, subject to the requirements of the California Labor Code.

21 30. DEFENDANT's policies and practices deprived PLAINTIFF and the other
22 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
23 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
24 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
25 hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

26 31. DEFENDANT knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.
28

1 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
2 forfeited wages due them for all hours worked at DEFENDANT’s direction, control and benefit
3 for the time spent working while off-the-clock. DEFENDANT’s uniform policy and practice to
4 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked
5 in accordance with applicable law is evidenced by DEFENDANT’s business records.

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

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

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

21 35. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
22 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
23 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
24 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
25 basis with bonus compensation when the employees met the various performance goals set by
26 DEFENDANTS.

27 36. However, from-time-to-time, when calculating the regular rate of pay, in those pay
28 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double

1 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
2 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
3 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked
4 rather than just all non-overtime hours worked. Management and supervisors described the
5 incentive/bonus program to potential and new employees as part of the compensation package.
6 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
7 CLASS members must be included in the "regular rate of pay." The failure to do so has resulted
8 in a systematic underpayment of overtime and double time compensation, meal and rest period
9 premiums, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS members by
10 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
11 for non-employees shall be calculated in the same manner as the regular rate of pay for the
12 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
13 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by
14 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of
15 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
16 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

28 ///

1 **G. Unlawful Deductions**

2 38. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
3 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
4 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
5 DEFENDANTS violated Labor Code § 221.

6 **H. Violations for Untimely Payment of Wages**

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

12 **I. Unlawful Rounding Violations**

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

25 41. Further, the mutability of DEFENDANT'S timekeeping system and unlawful
26 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
27 being inaccurately recorded. As a result, from time to time, DEFENDANT'S unlawful rounding
28 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work

1 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
2 duty meal break. Additionally, DEFENDANT’S unlawful rounding policy and practice caused
3 PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT
4 for more than ten (10) hours during a shift without receiving a second off-duty meal break.

5 **J. Failure to Provide Personnel Files**

6 42. On March 11, 2022, PLAINTIFF caused a written request via certified mail to be
7 delivered to DEFENDANTS for PLAINTIFF’S personnel and employment records, including
8 but not limited to: (1) payroll records; (2) employment contracts; (3) itemized pay stubs; and (4)
9 PLAINTIFF’S complete employment file.

10 43. DEFENDANTS failed to provide and/or make available to PLAINTIFF his
11 personnel records, payroll records, employment contract, and entire employment file within thirty
12 (30) days of his request stated above. In fact, as of the date of filing of this complaint,
13 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
14 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide
15 PLAINTIFF with his employment file. Section 1198.5 states that employees (and former
16 employees) have the right to inspect personnel records maintained by the employer “related to
17 the employee’s performance or to any grievance concerning the employee.” Employers must
18 allow inspection or copying within thirty (30) days of the request. PLAINTIFF is now entitled to
19 and requests injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, a statutory
20 penalty, and an award of attorneys’ fees and costs for bringing this action

21 44. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
22 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
23 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
24 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
25 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
26 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
27 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
28 DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during what was
supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks

1 without additional compensation and in accordance with DEFENDANT strict corporate policy
2 and practice. Moreover, DEFENDANT also provided PLAINTIFF with a paystub that failed to
3 comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF
4 for required business expenses related to the use of his personal cell phone, on behalf of and in
5 furtherance of his employment with DEFENDANT. Further, failed to provide and/or make
6 available to PLAINTIFF his personnel records, payroll records, employment contracts, and entire
7 employment file within (30) days of all his request on March 11, 2022. To date, DEFENDANT
8 have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed
9 to him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy
10 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

11 45. Article I, § 1 of the California Constitution, in pertinent part, states: “All people
12 are by nature free and independent and have inalienable rights. Among these are enjoying and
13 defending [] privacy.” Employees are “persons” who are entitled to the protection provided by
14 constitutional rights. Hence, Plaintiff is among the class of persons Cal. Const. Art I, § 1 is
15 intended to protect. Article I, § 1 of the California Constitution, guaranteeing the right to privacy,
16 creates a right of action against private entities [Kraslawsky v. Upper Deck Co. (1997) 56
17 Cal.App. 4th 179]. During his employment with DEFENDANT, DEFENDANT required
18 PLAINTIFF to subject himself to mandatory, weekly COVID-19 testing. On one occasion,
19 DEFENDANT announced that PLAINTIFF had tested positive for COVID-19. The
20 announcement took place in front of PLAINTIFF’S co-workers. In committing the actions alleged
21 herein, DEFENDANT violated PLAINTIFF’S constitutional right to privacy.

22 **K. CLASS ACTION ALLEGATIONS**

23 46. PLAINTIFF brings this Class Action on behalf of himself and a California class,
24 defined as all persons who are or previously were employed by DEFENDANT in California and
25 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
26 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
27 by the Court (the “CLASS PERIOD”).

28 47. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
deprived of wages and penalties from unpaid wages earned and due, including but not limited to

1 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
2 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
3 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
4 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

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

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

- 16 a. Whether DEFENDANT maintained legally compliant meal period policies and
17 practices;
- 18 b. Whether DEFENDANT maintained legally compliant rest period policies and
19 practices;
- 20 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
21 Members accurate premium payments for missed meal and rest periods;
- 22 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
23 Members accurate overtime wages;
- 24 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
25 Members at least minimum wage for all hours worked;
- 26 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
27 CLASS Members for required business expenses;
- 28 g. Whether DEFENDANT issued legally compliant wage statements;

- 1 h. Whether DEFENDANT committed an act of unfair competition by systematically
- 2 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
- 3 CLASS for all time worked;
- 4 i. Whether DEFENDANT committed an act of unfair competition by systematically
- 5 failing to record all meal and rest breaks missed by PLAINTIFF and other
- 6 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
- 7 of this work, required employees to perform this work and permits or suffers to
- 8 permit this work;
- 9 j. Whether DEFENDANT committed an act of unfair competition in violation of the
- 10 UCL, by failing to provide the PLAINTIFF and the other members of the
- 11 CALIFORNIA CLASS with the legally required meal and rest periods.

12 50. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
13 a result of DEFENDANT’s conduct and actions alleged herein.

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

16 52. PLAINTIFF will fairly and adequately represent and protect the interests of the
17 CALIFORNIA CLASS Members.

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

20 54. Further, PLAINTIFF’s interests are coincident with, and not antagonistic to, the
21 interests of the other CALIFORNIA CLASS Members.

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

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

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

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

16 Class treatment provides manageable judicial treatment calculated to bring an efficient
 17 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct
 18 of DEFENDANT.

19 **FIRST CAUSE OF ACTION**

20 **Unlawful Business Practices**

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

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

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

26 59. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
 27 Code § 17021.

28

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

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

10 61. By the conduct alleged herein, DEFENDANT has engaged and continues to
11 engage in a business practice which violates California law, including but not limited to, the
12 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
13 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
14 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
15 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
16 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

28

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

6 71. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
7 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
8 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
9 engaging in any unlawful and unfair business practices in the future.

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

17 **SECOND CAUSE OF ACTION**

18 **Failure To Pay Minimum Wages**

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

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

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

24 74. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
25 for DEFENDANT'S willful and intentional violations of the California Labor Code and the
26 Industrial Welfare Commission requirements for DEFENDANT'S failure to accurately calculate
27 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

3 76. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
5 the minimum so fixed is unlawful.

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

8 78. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
9 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
10 worked. As set forth herein, DEFENDANT'S uniform policy and practice was to unlawfully and
11 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
12 CALIFORNIA CLASS.

13 79. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
15 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
16 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

26 82. During the CLASS PERIOD, PLAINTIFF and the other members of the
27 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
28 failure to pay all earned wages.

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

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

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

21 86. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
22 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
23 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
24 California Labor Code and/or other applicable statutes. To the extent minimum wage
25 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
26 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
27 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
28 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS

1 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
2 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
3 recover statutory costs.

4 **THIRD CAUSE OF ACTION**

5 **Failure To Pay Overtime Compensation**

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

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

8 87. 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 88. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
12 for DEFENDANT's willful and intentional violations of the California Labor Code and the
13 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
14 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
15 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

26 92. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
27 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
28 they worked, including overtime work.

1 93. DEFENDANT’s uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
3 implementing a uniform policy and practice that failed to accurately record overtime worked by
4 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
5 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
6 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
7 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

14 95. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,
15 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
16 compensation for overtime worked.

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

25 97. During the CLASS PERIOD, PLAINTIFF and the other members of the
26 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
27 constituting a failure to pay all earned wages.

28

1 98. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
2 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
3 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
4 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
5 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as
6 evidenced by DEFENDANT’s business records and witnessed by employees.

7 99. By virtue of DEFENDANT’s unlawful failure to accurately pay all earned
8 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all
9 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
10 CLASS have suffered and will continue to suffer an economic injury in amounts which are
11 presently unknown to them, and which will be ascertained according to proof at trial.

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

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

26 102. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
27 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
28 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a

1 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
2 minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS
3 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
4 Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time
5 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
6 CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful,
7 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
8 Members are entitled to seek and recover statutory costs.

9 **FOURTH CAUSE OF ACTION**

10 **Failure To Provide Required Meal Periods**

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

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

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

16 104. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
17 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
18 required by the applicable Wage Order and Labor Code. The nature of the work performed by
19 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
20 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
21 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
22 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
23 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
24 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
25 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
26 Members with a second off-duty meal period in some workdays in which these employees were
27 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
28

1 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
2 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

11 **FIFTH CAUSE OF ACTION**

12 **Failure To Provide Required Rest Periods**

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

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

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

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

1 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
2 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
3 periods is evidenced by DEFENDANT's business records.

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

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

12 **SIXTH CAUSE OF ACTION**

13 **Failure To Provide Accurate Itemized Statements**

14 **(Cal. Lab. Code §§ 226)**

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

16 111. 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 Complaint.

18 112. Cal. Labor Code § 226 provides that an employer must furnish employees with an
19 "accurate itemized" statement in writing showing:

- 20 a. Gross wages earned,
- 21 b. (2) total hours worked by the employee, except for any employee whose
22 compensation is solely based on a salary and who is exempt from payment
23 of overtime under subdivision (a) of Section 515 or any applicable order of
24 the Industrial Welfare Commission,
- 25 c. the number of piece-rate units earned and any applicable piece rate if the employee
26 is paid on a piece-rate basis,
- 27 d. all deductions, provided that all deductions made on written orders of the employee
28 may be aggregated and shown as one item,

- 1 e. net wages earned,
- 2 f. the inclusive dates of the period for which the employee is paid,
- 3 g. the name of the employee and his or her social security number, except that by
- 4 January 1, 2008, only the last four digits of his or her social security number of an
- 5 employee identification number other than social security number may be shown
- 6 on the itemized statement,
- 7 h. the name and address of the legal entity that is the employer, and
- 8 i. all applicable hourly rates in effect during the pay period and the corresponding
- 9 number of hours worked at each hourly rate by the employee.

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

18 114. In addition to the foregoing, DEFENDANTS failed to provide itemized wage
19 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
20 requirements of California Labor Code Section 226.

21 115. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
22 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
23 CLASS. These damages include, but are not limited to, costs expended calculating the correct
24 wages for all missed meal and rest breaks and the amount of employment taxes which were not
25 properly paid to state and federal tax authorities. These damages are difficult to estimate.
26 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
27 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
28 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period

1 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
2 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
3 of the CALIFORNIA CLASS herein).

4 **SEVENTH CAUSE OF ACTION**

5 **Failure To Pay Wages When Due**

6 **(Cal. Lab. Code §§ 203)**

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

8 116. 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.

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

12 As used in this article:

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

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

20 119. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

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

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

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

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

15 **EIGHTH CAUSE OF ACTION**

16 **Failure To Reimburse Employees For Required Expenses**

17 **(Cal. Lab. Code §§ 2802)**

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

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

22 125. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

27 126. From time-to-time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
28 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the members of the
CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
using their personal cellular phone all on behalf of and for the benefit of DEFENDANT.

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

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

16 **NINTH CAUSE OF ACTION**

17 **VIOLATION OF CONSTITUTIONAL RIGHT TO PRIVACY**

18 **(Cal. Constitution Art. I, § 1)**

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

20 128. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
21 herein, the prior paragraphs of this Complaint.

22 129. Article I, § 1 of the California Constitution, in pertinent part, states: “All people
23 are by nature free and independent and have inalienable rights. Among these are enjoying and
24 defending [] privacy.”

25 130. Employees are “persons” who are entitled to the protection provided by
26 constitutional rights. Hence, Plaintiff is among the class of persons Cal. Const. Art I, § 1 is
27 intended to protect.
28

1 131. Article I, § 1 of the California Constitution, guaranteeing the right to privacy,
2 creates a right of action against private entities [Kraslawsky v. Upper Deck Co. (1997) 56
3 Cal.App. 4th 179.

4 132. During his employment with DEFENDANT, DEFENDANT required PLAINTIFF
5 to subject himself to mandatory, weekly COVID-19 testing. On one occasion, DEFENDANT
6 announced that PLAINTIFF had tested positive for COVID-19. The announcement took place in
7 front of PLAINTIFF'S co-workers. In committing the actions alleged herein, DEFENDANT
8 violated PLAINTIFF's constitutional right to privacy.

9 133. As a proximate result of DEFENDANT's violation of PLAINTIFF's fundamental
10 privacy rights, PLAINTIFF has suffered general damages in an amount according to proof.

11 **TENTH CAUSE OF ACTION**

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

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

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

15 134. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
16 herein, the prior paragraphs of this Complaint.

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

27 136. PLAINTIFF, and such persons that may be added from time to time who satisfy
28 the requirements and exhaust the administrative procedures under the Private Attorney General

1 Act, bring this Representative Action on behalf of the State of California with respect to himself
2 and all non-exempt and exempt employees who worked for Defendant in California during the
3 time period of May 13, 2021 until the present (the "AGGRIEVED EMPLOYEES").

4 137. On May 13, 2022, PLAINTIFF gave written notice by certified mail to the Labor
5 and Workforce Development Agency (the "Agency") and the employer of the specific
6 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
7 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
8 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
9 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
10 pursuant to Section 2699 as the proxy of the State of California with respect to all
11 AGGRIEVED EMPLOYEES as herein defined.

12 138. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANTS (a) failed to pay PLAINTIFF and other
14 AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide
15 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c)
16 failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES at the correct regular rate of
17 pay, (d) failed to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time
18 worked, and (e) failed to timely pay wages, all in violation of the applicable Labor Code
19 sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3,
20 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d),
21 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Cal. Bus. & Prof. Code
22 §§17200 and 17203, and the applicable Industrial Wage Order(s), and thereby gives rise to
23 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
24 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
25 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
26 the other AGGRIEVED EMPLOYEES.

27
28 ///

1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

- 5 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
6 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 7 b. An order temporarily, preliminarily and permanently enjoining and restraining
8 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 9 c. An order requiring DEFENDANT to pay all overtime wages and all sums
10 unlawfully withheld from compensation due to PLAINTIFF and the other members
11 of the CALIFORNIA CLASS; and
- 12 d. Restitutionary disgorgement of DEFENDANT’s ill-gotten gains into a fluid fund
13 for restitution of the sums incidental to DEFENDANT’s violations due to
14 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

15 2. On behalf of the CALIFORNIA CLASS:

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
17 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
18 to Cal. Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for overtime compensation and separately owed rest periods, due to
21 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
22 applicable CLASS PERIOD plus interest thereon at the statutory rate;
- 23 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
24 the applicable IWC Wage Order;
- 25 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
26 which a violation occurs and one hundred dollars (\$100) per each member of the
27 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
28 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for

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

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 behalf of PLAINTIFF for the Ninth causes of action:

- a. Compensatory damages, according to proof at trial;
- b. Special and General damages according to proof;
- c. Statutory damages, penalties and attorney’s fees;
- d. For punitive damages in an amount necessary to make an example of and to punish DEFENDANT and deter DEFENDANT from engaging in future similar conduct;
- e. For loss of earnings (both past and future); and,
- f. For interest at the legal rate in an amount according to proof.

4. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004.

5. 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: July 18, 2022

JCL LAW FIRM, APC

By: _____
Jean-Claude Lapuyade
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

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

DATED: July 18, 2022

JCL LAW FIRM, APC

By: _____
Jean-Claude Lapuyade
Attorney for PLAINTIFF

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

Eduardo Garcia, Esq.
egarcia@jcl-lawfirm.com

May 13, 2022

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

RADIANT SERVICES CORP.

c/o Saied Farahmand
651 W Knox St.
Gardena, CA 90248

Sent via Certified Mail and Return Receipt No. 7021 2720 0000 9972 7010

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff STEVE MARTINEZ (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant RADIANT SERVICES CORP. (“Defendant”). Plaintiff has been employed by Defendant in California since December 2021 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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.

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

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

Very truly yours,
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

Enclosure (1)

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

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

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

STEVE MARTINEZ, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

RADIANT SERVICES CORP., a California
corporation; 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 VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN

DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802;
9) VIOLATION OF CONSTITUTIONAL RIGHT TO PRIVACY.

DEMAND FOR A JURY TRIAL

Plaintiff STEVE MARTINEZ (“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 RADIANT SERVICES CORP. (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. DEFENDANT owns, operates, and/or manages a full-service laundry and dry-cleaning facility that provides linen services to hotels and hospitality companies the state of California, including the county of Los Angeles, where PLAINTIFF worked.

3. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANT 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 DEFENDANT 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.

4. The agents, servants, and/or employees of the DEFENDANT and each of them acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendant, and personally participated in the conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.

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

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

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

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

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

26 9. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
27 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
28 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained

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

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

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

15 **JURISDICTION AND VENUE**

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

20 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
21 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
22 the CALIFORNIA CLASS across California, including in this County, and committed the
23 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

24 **THE CONDUCT**

25 14. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
27 matter of company policy, practice and procedure, intentionally, knowingly and systematically
28 failed to provide legally compliant meal and rest periods, failed to accurately compensate

1 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
2 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
3 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
4 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
5 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
6 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
7 Members for business expenses, and failed to issue to PLAINTIFF and the members of the
8 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
9 applicable hourly rates in effect during the pay periods and the corresponding amount of time
10 worked at each hourly rate. DEFENDANT's uniform policies and practices are intended to
11 purposefully avoid the accurate and full payment for all time worked as required by California
12 law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors
13 who comply with the law. To the extent equitable tolling operates to toll claims by the
14 CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted
15 accordingly.

16 **A. Meal Period Violations**

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

1 DEFENDANT’s uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
2 CLASS Members for all time worked is evidenced by DEFENDANT’s business records.

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

18 **B. Rest Period Violations**

19 17. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
20 CALIFORNIA CLASS members were also required from time to time to work in excess of four
21 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
22 requirements and DEFENDANT’s inadequate staffing. Further, for the same reasons these
23 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
24 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
25 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
26 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
27 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
28 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or

1 on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
2 hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's
3 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
4 time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

5 **C. Unreimbursed Business Expenses**

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

17 19. In the course of their employment, DEFENDANT required PLAINTIFF and other
18 CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance
19 of their job duties as employees for DEFENDANT. But for the use of their own personal cell
20 phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential
21 job duties. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other
22 CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in the
23 course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA
24 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related
25 to the use of their personal cell phones, all on behalf of and for the benefit of DEFENDANT.

26 **D. Wage Statement Violations**

27 20. California Labor Code Section 226 requires an employer to furnish its employees
28 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,

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

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

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

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

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

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

26 25. During the CLASS PERIOD, from time-to-time DEFENDANT required
27 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
28 work, including but not limited to, undergoing pre-shift COVID-19 health screenings from time

1 to time off-the-clock. This resulted in PLAINTIFF and other members of the CALIFORNIA
2 CLASS to have to work while off-the-clock.

3 26. DEFENDANT directed and directly benefited from the uncompensated off-the-
4 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

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

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

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

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

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

26 ///

27 ///

28

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

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

12 34. State law provides that employees must be paid overtime at one-and-one-half times
13 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS members were
14 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
15 employee’s performance.

16 35. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
17 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
18 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
19 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
20 basis with bonus compensation when the employees met the various performance goals set by
21 DEFENDANTS.

22 36. However, from-time-to-time, when calculating the regular rate of pay, in those pay
23 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
24 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
25 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
26 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked
27 rather than just all non-overtime hours worked. Management and supervisors described the
28 incentive/bonus program to potential and new employees as part of the compensation package.

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

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

23 **G. Unlawful Deductions**

24 38. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
25 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
26 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
27 DEFENDANTS violated Labor Code § 221.

28 ///

1 **H. Violations for Untimely Payment of Wages**

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

7 **I. Unlawful Rounding Violations**

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

20 41. Further, the mutability of DEFENDANT’S timekeeping system and unlawful
21 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members’ time
22 being inaccurately recorded. As a result, from time to time, DEFENDANT’S unlawful rounding
23 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
24 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
25 duty meal break. Additionally, DEFENDANT’S unlawful rounding policy and practice caused
26 PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT
27 for more than ten (10) hours during a shift without receiving a second off-duty meal break.

28 ///

1 **J. Failure to Provide Personnel Files**

2 42. On March 11, 2022, PLAINTIFF caused a written request via certified mail to be
3 delivered to DEFENDANTS for PLAINTIFF’S personnel and employment records, including
4 but not limited to: (1) payroll records; (2) employment contracts; (3) itemized pay stubs; and (4)
5 PLAINTIFF’S complete employment file.

6 43. DEFENDANTS failed to provide and/or make available to PLAINTIFF his
7 personnel records, payroll records, employment contract, and entire employment file within thirty
8 (30) days of his request stated above. In fact, as of the date of filing of this complaint,
9 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
10 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide
11 PLAINTIFF with his employment file. Section 1198.5 states that employees (and former
12 employees) have the right to inspect personnel records maintained by the employer “related to
13 the employee’s performance or to any grievance concerning the employee.” Employers must
14 allow inspection or copying within thirty (30) days of the request. PLAINTIFF is now entitled to
15 and requests injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, a statutory
16 penalty, and an award of attorneys’ fees and costs for bringing this action

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

1 available to PLAINTIFF his personnel records, payroll records, employment contracts, and entire
2 employment file within (30) days of all his request on March 11, 2022. To date, DEFENDANT
3 have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed
4 to him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy
5 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

6 45. Article I, § 1 of the California Constitution, in pertinent part, states: “All people
7 are by nature free and independent and have inalienable rights. Among these are enjoying and
8 defending [] privacy.” Employees are “persons” who are entitled to the protection provided by
9 constitutional rights. Hence, Plaintiff is among the class of persons Cal. Const. Art I, § 1 is
10 intended to protect. Article I, § 1 of the California Constitution, guaranteeing the right to privacy,
11 creates a right of action against private entities [Kraslawsky v. Upper Deck Co. (1997) 56
12 Cal.App. 4th 179. During his employment with DEFENDANT, DEFENDANT required
13 PLAINTIFF to subject himself to mandatory, weekly COVID-19 testing. On one occasion,
14 DEFENDANT announced that PLAINTIFF had tested positive for COVID-19. The
15 announcement took place in front of PLAINTIFF’S co-workers. In committing the actions alleged
16 herein, DEFENDANT violated PLAINTIFF’S constitutional right to privacy.

17 **K. CLASS ACTION ALLEGATIONS**

18 46. PLAINTIFF brings this Class Action on behalf of himself and a California class,
19 defined as all persons who are or previously were employed by DEFENDANT in California and
20 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
21 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
22 by the Court (the “CLASS PERIOD”).

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

1 48. The members of the class are so numerous that joinder of all class members is
2 impractical.

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

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

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

6 j. Whether DEFENDANT committed an act of unfair competition in violation of the
7 UCL, by failing to provide the PLAINTIFF and the other members of the
8 CALIFORNIA CLASS with the legally required meal and rest periods.

9 50. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
10 a result of DEFENDANT's conduct and actions alleged herein.

11 51. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
12 the same interests as the other members of the class.

13 52. PLAINTIFF will fairly and adequately represent and protect the interests of the
14 CALIFORNIA CLASS Members.

15 53. PLAINTIFF retained able class counsel with extensive experience in class action
16 litigation.

17 54. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
18 interests of the other CALIFORNIA CLASS Members.

19 55. There is a strong community of interest among PLAINTIFF and the members of
20 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
21 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
22 sustained.

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

26 57. A class action is superior to other available methods for the fair and efficient
27 adjudication of this controversy because joinder of all class members is impractical. Moreover,
28 since the damages suffered by individual members of the class may be relatively small, the

1 expense and burden of individual litigation makes it practically impossible for the members of the
2 class individually to redress the wrongs done to them. Without class certification and
3 determination of declaratory, injunctive, statutory, and other legal questions within the class
4 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
5 create the risk of:

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

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

16 **FIRST CAUSE OF ACTION**

17 **Unlawful Business Practices**

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

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

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

23 59. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
24 Code § 17021.

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

1 Any person who engages, has engaged, or proposes to engage in unfair competition
2 may be enjoined in any court of competent jurisdiction. The court may make such
3 orders or judgments, including the appointment of a receiver, as may be necessary
4 to prevent the use or employment by any person of any practice which constitutes
5 unfair competition, as defined in this chapter, or as may be necessary to restore to
6 any person in interest any money or property, real or personal, which may have
7 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
8 17203).

9
10 61. By the conduct alleged herein, DEFENDANT has engaged and continues to
11 engage in a business practice which violates California law, including but not limited to, the
12 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
13 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
14 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
15 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
16 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

1 65. 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 66. 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 67. 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 68. 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 69. 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 70. 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 71. 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 72. 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 73. 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 74. 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 75. 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 76. 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 77. 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 78. 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 79. 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 regard to minimum wage pay.

12 80. 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 81. 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 82. 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 83. 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 84. 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 85. 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 86. 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 ///

THIRD CAUSE OF ACTION

Failure To Pay Overtime Compensation

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

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

87. 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.

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

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

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

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

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

93. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of 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 94. 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 95. 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 96. 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 97. 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 98. 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 99. 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.

8 100. DEFENDANT 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.

14 101. 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.

22 102. 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)**

9 103. 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.

12 104. 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.

26 105. 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.

3 106. 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)**

10 107. 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.

13 108. 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. In addition, DEFENDANT failed to compensate
23 PLAINTIFF and CALIFORNIA CLASS Members for their rest periods as required by the
24 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
25 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
26 periods is evidenced by DEFENDANT's business records.

27 109. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
28 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members

1 who were not provided a rest period, in accordance with the applicable Wage Order, one
2 additional hour of compensation at each employee's regular rate of pay for each workday that rest
3 period was not provided.

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

7 **SIXTH CAUSE OF ACTION**

8 **Failure To Provide Accurate Itemized Statements**

9 **(Cal. Lab. Code §§ 226)**

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

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

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

- 15 a. Gross wages earned,
- 16 b. (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
18 of overtime under subdivision (a) of Section 515 or any applicable order of
19 the Industrial Welfare Commission,
- 20 c. the number of piece-rate units earned and any applicable piece rate if the employee
21 is paid on a piece-rate basis,
- 22 d. all deductions, provided that all deductions made on written orders of the employee
23 may be aggregated and shown as one item,
- 24 e. net wages earned,
- 25 f. the inclusive dates of the period for which the employee is paid,
- 26 g. the name of the employee and his or her social security number, except that by
27 January 1, 2008, only the last four digits of his or her social security number of an
28

1 employee identification number other than social security number may be shown
2 on the itemized statement,

- 3 h. the name and address of the legal entity that is the employer, and
- 4 i. all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee.

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

14 114. In addition to the foregoing, DEFENDANTS failed to provide itemized wage
15 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
16 requirements of California Labor Code Section 226.

17 115. 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)**

5 116. 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.

8 117. 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.

16 118. 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."

19 119. 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.

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

121. Cal. Lab. Code § 203 provides:

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

1 122. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
2 terminated, and DEFENDANT has not tendered payment of wages to these employees who were
3 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
4 required by law.

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

10 **EIGHTH CAUSE OF ACTION**

11 **Failure To Reimburse Employees For Required Expenses**

12 **(Cal. Lab. Code §§ 2802)**

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

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

17 125. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

1 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
2 their personal cellular phones for DEFENDANT within the course and scope of their employment
3 for DEFENDANT. These expenses were necessary to complete their principal job duties.
4 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of their expectation.
5 Although these expenses were necessary expenses incurred by PLAINTIFF and the members of
6 the CALIFORNIA CLASS, DEFENDANT failed to indemnify and reimburse PLAINTIFF and
7 the members of the CALIFORNIA CLASS for these expenses as an employer is required to do
8 under the laws and regulations of California.

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

13 **NINTH CAUSE OF ACTION**

14 **VIOLATION OF CONSTITUTIONAL RIGHT TO PRIVACY**

15 **(Cal. Constitution Art. I, § 1)**

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

17 128. PLAINTIFF realleges and incorporate by this reference, as though fully set forth
18 herein, the prior paragraphs of this Complaint.

19 129. Article I, § 1 of the California Constitution, in pertinent part, states: "All people
20 are by nature free and independent and have inalienable rights. Among these are enjoying and
21 defending [] privacy."

22 130. Employees are "persons" who are entitled to the protection provided by
23 constitutional rights. Hence, Plaintiff is among the class of persons Cal. Const. Art I, § 1 is
24 intended to protect.

25 131. Article I, § 1 of the California Constitution, guaranteeing the right to privacy,
26 creates a right of action against private entities [Kraslawsky v. Upper Deck Co. (1997) 56
27 Cal.App. 4th 179.
28

1 132. During his employment with DEFENDANT, DEFENDANT required PLAINTIFF
2 to subject himself to mandatory, weekly COVID-19 testing. On one occasion, DEFENDANT
3 announced that PLAINTIFF had tested positive for COVID-19. The announcement took place in
4 front of PLAINTIFF'S co-workers. In committing the actions alleged herein, DEFENDANT
5 violated PLAINTIFF's constitutional right to privacy.

6 133. As a proximate result of DEFENDANT's violation of PLAINTIFF's fundamental
7 privacy rights, PLAINTIFF has suffered general damages in an amount according to proof.

8 **PRAYER FOR RELIEF**

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

11 1. On behalf of the CALIFORNIA CLASS:

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

22 2. On behalf of the CALIFORNIA CLASS:

- 23 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
24 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
25 to Cal. Code of Civ. Proc. § 382;
- 26 b. Compensatory damages, according to proof at trial, including compensatory
27 damages for overtime compensation and separately owed rest periods, due to
28 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the

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

- 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 behalf of PLAINTIFF for the Ninth causes of action:
- a. Compensatory damages, according to proof at trial;
 - b. Special and General damages according to proof;
 - c. Statutory damages, penalties and attorney’s fees;
 - d. For punitive damages in an amount necessary to make an example of and to punish DEFENDANT and deter DEFENDANT from engaging in future similar conduct;
 - e. For loss of earnings (both past and future); and,
 - f. For interest at the legal rate in an amount according to proof.

///

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

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: May 13, 2022

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: May 13, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®

OFFICIAL USE

7021 2720 0000 9972 7010

Certified Mail Fee \$	Postmark Here 002-322 Martinez 5/13/22
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy) \$	
<input type="checkbox"/> Return Receipt (electronic) \$	
<input type="checkbox"/> Certified Mail Restricted Delivery \$	
<input type="checkbox"/> Adult Signature Required \$	
<input type="checkbox"/> Adult Signature Restricted Delivery \$	
Postage \$	
Total Postage and Fees \$	
Sent To c/o Saied Farahmand	
Street and Apt. No., or PO Box No.	
City, State, ZIP+4®	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	