

**SUMMONS
(CITACION JUDICIAL)**

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

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

SALINAS LINCOLN MERCURY, INC., a California Corporation; and DOES 1 through 50, inclusive

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 5/10/2021 2:03 PM
By: Rowena Esquerra, Deputy

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

RICHARD SANCHEZ, an individual, on behalf of himself, other Aggrieved Employees, and the State of California

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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.sucorte.ca.gov), 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.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Monterey Courthouse
1200 Aguajito Road
Monterey, CA 93940

CASE NUMBER: (Número del Caso):
21CV001535

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): Zakay Law Group, APLC

Shani O. Zakay, Esq. (SBN 277924); T: 619-255-9047; F: 858-404-9203; 3990 Old Town Avenue Suite C204 San Diego, CA 92110

DATE: 05/10/2021 Clerk, by /s/ Rowena Esquerra, Deputy
(Fecha) (Secretario) (Adjunto)

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



NOTICE TO THE PERSON SERVED: You are served

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

ZAKAY LAW GROUP, APLC
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JCL LAW FIRM, APC
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Attorneys for Plaintiff

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

RICHARD SANCHEZ on himself of
herself, other Aggrieved Employes, and the
State of California,

Plaintiff,

v.

SALINAS LINCOLN MERCURY, INC. a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No: 21CV001535

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 *et seq.*]

Plaintiff RICHARD SANCHEZ, an individual, (“PLAINTIFF”), on behalf of the people of the State of California and as “aggrieved employees” acting as a private attorney general under the Labor Code Private Attorney General Action of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

1. PLAINTIFF brings this action against SALINAS LINCOLN MERCURY, INC. (“DEFENDANT” or “DEFENDANTS”) seeking only to recover PAGA civil penalties for himself, and on behalf of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does not seek to recover anything other than penalties as permitted

1 by California Labor Code § 2699. To the extent that statutory violations are mentioned for wage
2 violations, PLAINTIFF does not seek underlying general and/or special damages for those
3 violations in this action, but simply the civil penalties permitted by California Labor Code §
4 2699. Notwithstanding, PLAINTIFF is not abandoning her right to pursue her individual claims
5 for, inter alia, Defendant's alleged wage violations, and/or general or special damages arising
6 from those violations, and she fully intends to, at a future date, pursue claims for those
7 individual claims and damages.

8 2. California has enacted the PAGA to permit an individual to bring an action on
9 behalf of herself and on behalf of others for PAGA penalties only, which is the precise and sole
10 nature of this action.

11 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
12 DEFENDANTS' violations under PAGA and solely for the relief as permitted by PAGA – that
13 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
14 complaint should be construed as attempting to obtain any relief that would not be available in a
15 PAGA-only action.

16 4. Defendant SALINAS LINCOLN MERCURY, INC. ("DEFENDANT" or
17 "Defendant") is a California Corporation and at all relevant times mentioned herein conducted
18 and continues to conduct substantial and regular business throughout California.

19 5. DEFENDANT, owns and operates a car dealership in the city of Salinas, in
20 Monterey County.

21 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
22 employee entitled to minimum wages, overtime pay and meal and rest periods from June 2017
23 to March 2020. PLAINTIFF was at all times relevant mentioned herein classified by
24 DEFENDANT as a non-exempt employee paid on an hourly basis.

25 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
26 the requirements and exhaust the administrative procedures under the Private Attorney General
27 Act, bring this Representative Action on behalf of the State of California with respect to himself
28 and all individuals who are or previously were employed by DEFENDANT in California (the
"AGGRIEVED EMPLOYEES") during the PAGA PERIOD, brings this representative action

1 pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S violation of
2 California Labor Code §§ 201, 202, 203, 204, 206.5, 210, 226, 226.7, 246, 510, 512, 558, 1194,
3 1197, 1197.1, 1198, 2802 and the applicable Wage Order. Based upon the foregoing,
4 PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning
5 of Labor Code § 2699, *et seq.*

6 8. The true names and capacities, whether individual, corporate, subsidiary,
7 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
8 unknown to PLAINTIFF who therefore sue these Defendants by such fictitious names pursuant
9 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
10 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
11 PLAINTIFFS are informed and believes, and based upon that information and belief allege, that
12 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
13 responsible in some manner for one or more of the events and happenings that proximately
14 caused the injuries and damages hereinafter alleged

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

23 THE CONDUCT

24 10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
25 was required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
27 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
28 and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under

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

10 11. As a result of their rigorous work schedules, PLAINTIFF and other
11 AGGRIEVED EMPLOYEES were also from time to time unable to take off duty meal breaks
12 and were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
13 EMPLOYEES were required to perform work as ordered by DEFENDANT for more than five
14 (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed
15 to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
16 each workday in which these employees were required by DEFENDANT to work ten (10) hours
17 of work. PLAINTIFF and the other AGGRIEVED EMPLOYEES therefore forfeited meal
18 breaks without additional compensation and in accordance with DEFENDANT's strict
19 corporate policy and practice

20 12. During the PAGA PERIOD, from time to time, PLAINTIFF and other
21 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without
22 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
23 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a
24 first and second rest period of at least ten (10) minutes for some shifts worked of between six
25 (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
26 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
27 rest breaks, PLAINTIFF and the AGGRIEVED EMPLOYEES were required to remain on the
28 premises and subject to DEFENDANT's control. If they were to leave DEFENDANT's

1 premises, PLAINTIFF and the AGGRIEVED EMPLOYEES were required to clock out.
2 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
3 wages in lieu thereof. As a result of their rigorous work schedules, and in compliance with
4 DEFENDANT's policy, PLAINTIFF and other AGGRIEVED EMPLOYEES were periodically
5 denied their proper rest periods by DEFENDANT and DEFENDANT'S managers.

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

10 14. The second component of PLAINTIFF's and other AGGRIEVED
11 EMPLOYEES' compensation was DEFENDANT's non-discretionary incentive program that
12 paid PLAINTIFF and other AGGRIEVED EMPLOYEES incentive wages based on their
13 performance for DEFENDANT. The non-discretionary incentive program provided all
14 employees paid on an hourly basis with incentive compensation when the employees met the
15 various performance goals set by DEFENDANT. However, when calculating the regular rate of
16 pay in order to pay overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES,
17 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
18 rate of pay" for purposes of calculating overtime pay. Management and supervisors described
19 the incentive program to potential and new employees as part of the compensation package. As
20 a matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED
21 EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted in
22 an underpayment of overtime compensation to PLAINTIFF and other AGGRIEVED
23 EMPLOYEES by DEFENDANT.

24 15. DEFENDANT as a matter of corporate policy, practice and procedure,
25 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and
26 the other AGGRIEVED EMPLOYEES for required business expenses incurred by the
27 PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their
28 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are

1 required to indemnify employees for all expenses incurred in the course and scope of their
2 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
3 her employee for all necessary expenditures or losses incurred by the employee in direct
4 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
5 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
6 believed them to be unlawful."

7 16. In the course of their employment PLAINTIFF and other AGGRIEVED
8 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
9 cellular phones as a result of and in furtherance of their job duties as employees for
10 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
11 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
12 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
13 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
14 were not limited to, costs related to the use of their personal cellular phones and travel with their
15 personal vehicles, on behalf of and for the benefit of DEFENDANT.

16 17. 15. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
17 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
18 show, among other things, the correct net and gross wages earned. Cal. Lab. Code § 226
19 provides that every employer shall furnish each of his or her employees with an accurate
20 itemized wage statement in writing showing, among other things, gross wages earned and all
21 applicable hourly rates in effect during the pay period and the corresponding amount of time
22 worked at each hourly rate. Specifically, DEFENDANT violated Cal. Lab. Code 226(a)(8) by
23 failing to list the correct name and address of the legal entity that employed PLAINTIFF and
24 other AGGRIEVED EMPLOYEES. Aside, from the violations listed above in this paragraph,
25 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
26 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
27 time provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements
28 which violated Cal. Lab. Code § 226.

1 18. In violation of the applicable sections of the California Labor Code and the
2 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
3 matter of company policy, practice and procedure, intentionally, knowingly and systematically
4 failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES ASS for missed
5 meal and rest periods and all wages due to them. This uniform policy and practice of
6 DEFENDANT was intended to purposefully avoid the payment for all time worked as required
7 by California law which allows DEFENDANT to illegally profit and gain an unfair advantage
8 over competitors who complied with the law. To the extent equitable tolling operates to toll
9 claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should
10 be adjusted accordingly.

11 19. By reason of this uniform conduct applicable to PLAINTIFF and all
12 AGGRIEVED EMPLOYEES, DEFENDANT committed acts of unfair competition in violation
13 of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
14 "UCL"), by engaging in a company-wide policy and procedure which failed to accurately
15 calculate and record all missed meal and rest periods and all wages due to PLAINTIFF and
16 other AGGRIEVED EMPLOYEES. The proper recording of these employees' missed meal and
17 rest break wages and all other wages due to them is the DEFENDANT's burden. As a result of
18 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
19 failed to properly calculate and/or pay all required compensation for work performed by the
20 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
21 promulgated thereunder as herein alleged.

22 20. The proper recording of these employees' missed meal and rest breaks is the
23 DEFENDANT'S burden. As a result of DEFENDANT'S intentional disregard of the obligation
24 to meet this burden, DEFENDANT failed to properly calculate and/or pay all required
25 compensation for work performed by the AGGRIEVED EMPLOYEES and violated the
26 California Labor Code and regulations promulgated thereunder as herein alleged.

27 21. In addition, because of DEFENDANT's commission pay plan with respect to
28 some the AGGRIEVED EMPLOYEES, DEFENDANT failed to separately compensate

1 AGGRIEVED EMPLOYEES for their rest periods as required by the applicable Wage Order
2 and Labor Code. DEFENDANT did not have a policy or practice which paid for off-duty rest
3 periods to PLAINTIFF and the other AGGRIEVED EMPLOYEES. As a result,
4 DEFENDANT's failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with all
5 the legally required paid rest periods is evidenced by DEFENDANT's business records.

6 22. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
7 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
8 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT
9 did not have a policy or practice which provides timely off-duty meal and rest breaks to
10 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks. The
11 nature of the work performed by the PLAINTIFF did not prevent him from being relieved of all
12 of his duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure
13 to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's
14 business records. DEFENDANT also failed to pay PLAINTIFF earned commission wages upon
15 termination of employment with DEFENDANT. To date, DEFENDANT has yet to pay
16 PLAINTIFF all of her wages due to him and DEFENDANT has failed to pay any penalties
17 owed to him under California Labor Code Section 203. The amount in controversy for
18 PLAINTIFF individually does not exceed the sum or value of \$75,000.

19 20 JURISDICTION AND VENUE

21 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
22 Procedure, Section 410.10.

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

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FIRST CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§ 2698 et seq.)

(Alleged by PLAINTIFF against all Defendants)

25. PLAINTIFFS reallege and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

27. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals who are or previously were employed by DEFENDANT and classified as non-exempt employees in California during the time period of March 4, 2020 until the present (the "AGGRIEVED EMPLOYEES").

28. On March 4, 2020, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.

1 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
 2 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
 3 to all AGGRIEVED EMPLOYEES as herein defined.

4 29. The policies, acts and practices heretofore described were and are an unlawful
 5 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
 6 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
 7 minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal
 8 and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
 9 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
 10 including but not limited to Labor Code §§ 201, 202, 203, 204, 206.5, 210, 226, 226.7, 246,
 11 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, and the applicable Industrial Wage Order(s),
 12 and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby
 13 seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act
 14 of 2004 as the representative of the State of California for the illegal conduct perpetrated on
 15 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

16 30. Some or all of the conduct and violations alleged herein occurred during the
 17 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
 18 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
 19 that affected other AGGRIEVED EMPLOYEES. (Carrington v. Starbucks Corp. (2018) 30
 20 Cal.App.5th 504, 519; See also Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal.
 21 App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one
 22 Labor Code violation committed by an employer—to pursue penalties for all the Labor Code
 23 violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

24
 25 **PRAYER FOR RELIEF**

26 WHEREFORE, PLAINTIFF prays for a judgment against each Defendants, jointly and
 27 severally, as follows:

28 1. On behalf of the State of California and with respect to all AGGRIEVED

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EMPLOYEES:

- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004
- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §1197.

DATED: May 10, 2021

ZAKAY LAW GROUP, APLC

By: _____



Shani O. Zakay
Attorney for Plaintiffs

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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #35901

March 4, 2021

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

SALINAS LINCOLN MERCURY, INC.	
--------------------------------------	--

Rhonda Good	
-------------	--

444 Auto Center Circle	
------------------------	--

Salinas, CA 93907	
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Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 206.5, 246, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198 & 2802, 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 Richard Sanchez (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Salinas Lincoln Mercury, Inc. (“Defendant”). Plaintiff seeks to represent all aggrieved employees, defined as all individuals who worked for Defendant in California during the relevant claim period, including both non-exempt employees and/or exempt employees subject to various exemptions, including but not limited to, commission-based and piece-rate employees. Plaintiff was employed by Defendant in California from June of 2017 to March 18, 2020 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as certain non-discretionary incentive payments. 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. Defendant also failed to reimburse Plaintiff and other aggrieved employees for business-related expenses. Further, Defendant failed to properly calculate the regular rate of pay for purposes of compensating paid overtime compensation, sick time, and/or vacation pay to Plaintiff and the aggrieved employees. Finally, Defendant failed to separately compensate piece-rate and/or commission-based aggrieved employees for non-productive time, including rest periods. 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, violates Labor Code §§ 201, 202, 203, 204, 206.5, 210, 226, 226.7, 246, 510, 512, 558,

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1194, 1197, 1197.1, 1198 & 2802, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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.

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 filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. 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.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a long horizontal flourish extending to the right.

Shani O. Zakay
Attorney for Plaintiff

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6

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7

SUPERIOR COURT OF THE STATE OF CALIFORNIA

8

IN AND FOR THE COUNTY OF MONTEREY

9

10

RICHARD SANCHEZ, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

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Plaintiff,

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vs.

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SALINAS LINCOLN MERCURY, INC.,
a California Corporation; and DOES 1
through 50, inclusive,

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Defendants.

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

DEMAND FOR A JURY TRIAL

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

4 THE PARTIES

5
6 1. Defendant Salinas Lincoln Mercury, Inc. (“DEFENDANT”) is a California
7 corporation that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California.

9 2. DEFENDANT owns and operates car dealerships in California.

10 3. PLAINTIFF was employed by DEFENDANT in California from June of 2017
11 to March 18, of 2020 and was at all times classified by DEFENDANT as a non-exempt
12 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
13 payment of minimum and overtime wages due for all time worked.

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

21 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
22 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
23 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
24 which failed to lawfully compensate these employees. DEFENDANT’s uniform policy and
25 practice alleged herein was an unlawful, unfair and deceptive business practice whereby
26 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members
27 of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA
28 CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the

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

4 6. The true names and capacities, whether individual, corporate, subsidiary,
5 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
6 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
7 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
8 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
9 PLAINTIFF is informed and believe, and based upon that information and belief alleges, that
10 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
11 responsible in some manner for one or more of the events and happenings that proximately
12 caused the injuries and damages hereinafter alleged.

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

21 22 **THE CONDUCT**

23 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
24 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including
26 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
27 and CALIFORNIA CLASS Members to work without paying them for all the time they were
28 under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work

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

9 9. As a result of their rigorous work schedules, 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 to perform work from time to time 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
16 which these employees are required by DEFENDANT to work ten (10) hours of work.
17 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
18 without additional compensation and in accordance with DEFENDANT's strict corporate policy
19 and practice. DEFENDANT failed to maintain adequate staffing levels while increasing the
20 production levels for each employee.

21 10. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
22 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
23 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
24 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
25 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
26 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
27 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
28 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also

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

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

8 12. The second component of PLAINTIFF's and other CALIFORNIA CLASS
9 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
10 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
11 performance for DEFENDANT. The non-discretionary incentive program provided all
12 employees paid on an hourly basis with incentive compensation when the employees met the
13 various performance goals set by DEFENDANT. However, when calculating the regular rate
14 of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
15 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
16 rate of pay" for purposes of calculating overtime pay. Management and supervisors described
17 the incentive program to potential and new employees as part of the compensation package. As
18 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
19 CLASS Members must be included in the "regular rate of pay." The failure to do so has
20 resulted in an underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA
21 CLASS Members by DEFENDANT.

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

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

5 14. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
6 Members as a business expense, were required by DEFENDANT to use their own personal
7 cellular phones as a result of and in furtherance of their job duties as employees for
8 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
9 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
10 result, in the course of their employment with DEFENDANT, PLAINTIFF and other members
11 of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
12 were not limited to, costs related to the use of their personal cellular phones and travel with their
13 personal vehicles, on behalf of and for the benefit of DEFENDANT.

14 15. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
15 other members of the CALIFORNIA CLASS with complete and accurate wage statements
16 which failed to show, among other things, the correct net and gross wages earned. Cal. Lab.
17 Code § 226 provides that every employer shall furnish each of his or her employees with an
18 accurate itemized wage statement in writing showing, among other things, gross wages earned
19 and all applicable hourly rates in effect during the pay period and the corresponding amount of
20 time worked at each hourly rate. Specifically, DEFENDANT violated Cal. Lab. Code 226(a)(8)
21 by failing to list the correct name and address of the legal entity that employed PLAINTIFF and
22 other CALIFORNIA CLASS Members. Aside, from the violations listed above in this
23 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists
24 all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from
25 time to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
26 wage statements which violated Cal. Lab. Code § 226.

27 16. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as

1 a matter of company policy, practice and procedure, intentionally, knowingly and systematically
2 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
3 missed meal and rest periods and all wages due to them. This uniform policy and practice of
4 DEFENDANT was intended to purposefully avoid the payment for all time worked as required
5 by California law which allows DEFENDANT to illegally profit and gain an unfair advantage
6 over competitors who complied with the law. To the extent equitable tolling operates to toll
7 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
8 PERIOD should be adjusted accordingly.

9 17. By reason of this uniform conduct applicable to PLAINTIFF and all
10 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
11 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
12 (the “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
13 calculate and record all missed meal and rest periods and all wages due to PLAINTIFF and
14 other CALIFORNIA CLASS Members. The proper recording of these employees’ missed meal
15 and rest breakwages and all other wages due to them is the DEFENDANT’s burden. As a result
16 of DEFENDANT’s intentional disregard of the obligation to meet this burden, DEFENDANT
17 failed to properly calculate and/or pay all required compensation for work performed by the
18 members of the CALIFORNIA CLASS and violated the California Labor Code and regulations
19 promulgated thereunder as herein alleged.

20 18. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
21 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
22 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT
23 did not have a policy or practice which provides timely off-duty meal and rest breaks to
24 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks.
25 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved
26 of all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT’s
27 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
28 DEFENDANT’s business records. DEFENDANT also failed to pay PLAINTIFF earned

1 commission wages upon termination of employment with DEFENDANT. To date,
2 DEFENDANT has yet to pay PLAINTIFF all of her wages due to him and DEFENDANT has
3 failed to pay any penalties owed to him under California Labor Code Section 203. The amount
4 in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

5 6 **JURISDICTION AND VENUE**

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

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

17 18 **THE CALIFORNIA CLASS**

19 21. PLAINTIFF bring the First Cause of Action for Unfair, Unlawful and Deceptive
20 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
21 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
22 all individuals who are or previously were employed by DEFENDANT in California and
23 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
24 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
25 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
26 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
27 (\$5,000,000.00).

28 22. To the extent equitable tolling operates to toll claims by the CALIFORNIA

1 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
2 accordingly.

3 23. DEFENDANT, as a matter of company policy, practice and procedure, and in
4 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
5 requirements, and the applicable provisions of California law, intentionally, knowingly, and
6 wilfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
7 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
8 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
9 permits or suffers to permit this work.

10 24. DEFENDANT has the legal burden to establish that each and every
11 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
12 required by California laws. The DEFENDANT, however, as a matter of uniform and
13 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
14 PERIOD and still fails to have in place a policy or practice to ensure that each and every
15 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
16 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
17 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
18 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

19 25. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
20 CLASS Members is impracticable.

21 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
22 California law by:

- 23 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
24 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
25 deceptively having in place company policies, practices and procedures
26 that uniformly and systematically failed to record and pay PLAINTIFF
27 and the other members of the CALIFORNIA CLASS for all time worked,
28 including minimum wages owed and overtime wages owed for work

1 performed by these employees;

2 (b) Committing an act of unfair competition in violation of the UCL, by
3 failing to provide the PLAINTIFF and the other members of the
4 CALIFORNIA CLASS with the legally required meal and rest periods;
5 and,

6 (c) Committing an act of unfair competition in violation of the California
7 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
8 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
9 the CALIFORNIA CLASS members with necessary expenses incurred in
10 the discharge of their job duties.

11 27. This Class Action meets the statutory prerequisites for the maintenance of a Class
12 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

13 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
14 that the joinder of all such persons is impracticable and the disposition of
15 their claims as a class will benefit the parties and the Court;

16 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
17 that are raised in this Complaint are common to the CALIFORNIA
18 CLASS will apply uniformly to every member of the CALIFORNIA
19 CLASS;

20 (c) The claims of the representative PLAINTIFF are typical of the claims of
21 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
22 other members of the CALIFORNIA CLASS, was classified as non-
23 exempt employees paid on an hourly basis who was subjected to the
24 DEFENDANT's deceptive practice and policy described herein.
25 PLAINTIFF sustained economic injury as a result of DEFENDANT's
26 employment practices. PLAINTIFF and the members of the
27 CALIFORNIA CLASS were and are similarly or identically harmed by
28 the same unlawful, deceptive, unfair and pervasive pattern of misconduct

1 engaged in by DEFENDANT; and,

2 (d) The representative PLAINTIFF will fairly and adequately represent and
3 protect the interest of the CALIFORNIA CLASS, and has retained
4 counsel who are competent and experienced in Class Action litigation.
5 There are no material conflicts between the claims of the representative
6 PLAINTIFF and the members of the CALIFORNIA CLASS that would
7 make class certification inappropriate. Counsel for the CALIFORNIA
8 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
9 Members.

10 28. In addition to meeting the statutory prerequisites to a Class Action, this action is
11 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

12 (a) Without class certification and determination of declaratory, injunctive,
13 statutory and other legal questions within the class format, prosecution of
14 separate actions by individual members of the CALIFORNIA CLASS will
15 create the risk of:

16 1) Inconsistent or varying adjudications with respect to individual
17 members of the CALIFORNIA CLASS which would establish
18 incompatible standards of conduct for the parties opposing the
19 CALIFORNIA CLASS; and/or,

20 2) Adjudication with respect to individual members of the
21 CALIFORNIA CLASS which would as a practical matter be
22 dispositive of interests of the other members not party to the
23 adjudication or substantially impair or impede their ability to
24 protect their interests.

25 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
26 act on grounds generally applicable to the CALIFORNIA CLASS, making
27 appropriate class-wide relief with respect to the CALIFORNIA CLASS
28 as a whole in that DEFENDANT uniformly failed to pay all wages due to

1 members of the CALIFORNIA CLASS as required by law;

2 1) With respect to the First Cause of Action, the final relief on behalf
3 of the CALIFORNIA CLASS sought does not relate exclusively to
4 restitution because through this claim PLAINTIFF seeks
5 declaratory relief holding that the DEFENDANT's policy and
6 practices constitute unfair competition, along with declaratory
7 relief, injunctive relief, and incidental equitable relief as may be
8 necessary to prevent and remedy the conduct declared to constitute
9 unfair competition;

10 (c) Common questions of law and fact exist as to the members of the
11 CALIFORNIA CLASS, with respect to the practices and violations of
12 California law as listed above, and predominate over any question
13 affecting only individual CALIFORNIA CLASS Members, and a Class
14 Action is superior to other available methods for the fair and efficient
15 adjudication of the controversy, including consideration of:

16 1) The interests of the members of the CALIFORNIA CLASS in
17 individually controlling the prosecution or defense of separate
18 actions in that the substantial expense of individual actions will be
19 avoided to recover the relatively small amount of economic losses
20 sustained by the individual CALIFORNIA CLASS Members when
21 compared to the substantial expense and burden of individual
22 prosecution of this litigation;

23 2) Class certification will obviate the need for unduly duplicative
24 litigation that would create the risk of:

25 A. Inconsistent or varying adjudications with respect to
26 individual members of the CALIFORNIA CLASS, which
27 would establish incompatible standards of conduct for the
28 DEFENDANT; and/or,

1 B. Adjudications with respect to individual members of the
2 CALIFORNIA CLASS would as a practical matter be
3 dispositive of the interests of the other members not parties
4 to the adjudication or substantially impair or impede their
5 ability to protect their interests;

6 3) In the context of wage litigation because a substantial number of
7 individual CALIFORNIA CLASS Members will avoid asserting
8 their legal rights out of fear of retaliation by DEFENDANT, which
9 may adversely affect an individual's job with DEFENDANT or
10 with a subsequent employer, the Class Action is the only means to
11 assert their claims through a representative; and,

12 4) A class action is superior to other available methods for the fair
13 and efficient adjudication of this litigation because class treatment
14 will obviate the need for unduly and unnecessary duplicative
15 litigation that is likely to result in the absence of certification of
16 this action pursuant to Cal. Code of Civ. Proc. § 382.

17 29. This Court should permit this action to be maintained as a Class Action pursuant
18 to Cal. Code of Civ. Proc. § 382 because:

19 (a) The questions of law and fact common to the CALIFORNIA CLASS
20 predominate over any question affecting only individual CALIFORNIA
21 CLASS Members because the DEFENDANT's employment practices are
22 uniform and systematically applied with respect to the CALIFORNIA
23 CLASS;

24 (b) A Class Action is superior to any other available method for the fair and
25 efficient adjudication of the claims of the members of the CALIFORNIA
26 CLASS because in the context of employment litigation a substantial
27 number of individual CALIFORNIA CLASS Members will avoid
28 asserting their rights individually out of fear of retaliation or adverse

- 1 impact on their employment;
- 2 (c) The members of the CALIFORNIA CLASS are so numerous that it is
- 3 impractical to bring all members of the CALIFORNIA CLASS before the
- 4 Court;
- 5 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
- 6 able to obtain effective and economic legal redress unless the action is
- 7 maintained as a Class Action;
- 8 (e) There is a community of interest in obtaining appropriate legal and
- 9 equitable relief for the acts of unfair competition, statutory violations and
- 10 other improprieties, and in obtaining adequate compensation for the
- 11 damages and injuries which DEFENDANT's actions have inflicted upon
- 12 the CALIFORNIA CLASS;
- 13 (f) There is a community of interest in ensuring that the combined assets of
- 14 DEFENDANT are sufficient to adequately compensate the members of
- 15 the CALIFORNIA CLASS for the injuries sustained;
- 16 (g) DEFENDANT has acted or refused to act on grounds generally applicable
- 17 to the CALIFORNIA CLASS, thereby making final class-wide relief
- 18 appropriate with respect to the CALIFORNIA CLASS as a whole;
- 19 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
- 20 the business records of DEFENDANT; and,
- 21 (i) Class treatment provides manageable judicial treatment calculated to bring
- 22 a efficient and rapid conclusion to all litigation of all wage and hour
- 23 related claims arising out of the conduct of DEFENDANT as to the
- 24 members of the CALIFORNIA CLASS.

25 30. DEFENDANT maintains records from which the Court can ascertain and identify

26 by job title each of DEFENDANT's employees who as have been systematically, intentionally

27 and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein

28

1 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
2 of similarly situated employees when they have been identified.

3
4 **THE CALIFORNIA LABOR SUB-CLASS**

5 31. PLAINTIFF further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and
6 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
7 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California
8 (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior
9 to the filing of the complaint and ending on the date as determined by the Court (the
10 "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.
11 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
12 Members is under five million dollars (\$5,000,000.00).

13 32. DEFENDANT, as a matter of company policy, practice and procedure, and in
14 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
15 requirements, and the applicable provisions of California law, intentionally, knowingly, and
16 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
17 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA
18 LABOR SUB-CLASS and reporting time wages owed to these employees, even though
19 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
20 permitted or suffered to permit this work. DEFENDANT has uniformly denied these
21 CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled
22 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
23 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
24 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

25 33. DEFENDANT maintains records from which the Court can ascertain and identify
26 by name and job title, each of DEFENDANT's employees who have been systematically,
27 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
28 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include

1 any additional job titles of similarly situated employees when they have been identified.

2 34. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
3 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

4 35. Common questions of law and fact exist as to members of the CALIFORNIA
5 LABOR SUB-CLASS, including, but not limited, to the following:

- 6 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
7 compensation due to members of the CALIFORNIA LABOR SUB-
8 CLASS for missed meal and rest breaks in violation of the California
9 Labor Code and California regulations and the applicable California Wage
10 Order;
- 11 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS with accurate
13 itemized wage statements;
- 14 (c) Whether DEFENDANT has engaged in unfair competition by the
15 above-listed conduct;
- 16 (d) The proper measure of damages and penalties owed to the members of the
17 CALIFORNIA LABOR SUB-CLASS; and,
- 18 (e) Whether DEFENDANT's conduct was willful.

19 36. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
20 under California law by:

- 21 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the
22 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
23 CLASS all wages due for overtime worked, for which DEFENDANT is
24 liable pursuant to Cal. Lab. Code § 1194;
- 25 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
26 accurately pay PLAINTIFF and the members of the CALIFORNIA
27 LABOR SUB-CLASS the correct minimum wage pay for which
28 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

- 1 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
2 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
3 itemized statement in writing showing the corresponding correct amount
4 of wages earned by the employee;
- 5 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
6 PLAINTIFF and the other members of the CALIFORNIA CLASS with
7 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
8 and the legally required off-duty rest breaks;
- 9 (e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
10 the CALIFORNIA CLASS members with necessary expenses incurred in
11 the discharge of their job duties; and,
- 12 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
13 when an employee is discharged or quits from employment, the employer
14 must pay the employee all wages due without abatement, by failing to
15 tender full payment and/or restitution of wages owed or in the manner
16 required by California law to the members of the CALIFORNIA LABOR
17 SUB-CLASS who have terminated their employment.

18 37. This Class Action meets the statutory prerequisites for the maintenance of a Class
19 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 20 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
21 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
22 Members is impracticable and the disposition of their claims as a class
23 will benefit the parties and the Court;
- 24 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
25 that are raised in this Complaint are common to the CALIFORNIA
26 LABOR SUB-CLASS and will apply uniformly to every member of the
27 CALIFORNIA LABOR SUB-CLASS;
- 28 (c) The claims of the representative PLAINTIFF are typical of the claims of

1 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
2 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
3 was a non-exempt employee paid on an hourly basis who was subjected
4 to the DEFENDANT's practice and policy described herein. PLAINTIFF
5 sustained economic injury as a result of DEFENDANT's employment
6 practices. PLAINTIFF and the members of the CALIFORNIA LABOR
7 SUB-CLASS were and are similarly or identically harmed by the same
8 unlawful, deceptive, unfair and pervasive pattern of misconduct engaged
9 in by DEFENDANT; and,

10 (d) The representative PLAINTIFF will fairly and adequately represent and
11 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
12 retained counsel who are competent and experienced in Class Action
13 litigation. There are no material conflicts between the claims of the
14 representative PLAINTIFF and the members of the CALIFORNIA
15 LABOR SUB-CLASS that would make class certification inappropriate.
16 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
17 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

18 38. In addition to meeting the statutory prerequisites to a Class Action, this action is
19 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

20 (a) Without class certification and determination of declaratory, injunctive,
21 statutory and other legal questions within the class format, prosecution of
22 separate actions by individual members of the CALIFORNIA LABOR
23 SUB-CLASS will create the risk of:

24 1) Inconsistent or varying adjudications with respect to individual
25 members of the CALIFORNIA LABOR SUB-CLASS which
26 would establish incompatible standards of conduct for the parties
27 opposing the CALIFORNIA LABOR SUB-CLASS; or,

28 2) Adjudication with respect to individual members of the

1 CALIFORNIA LABOR SUB-CLASS which would as a practical
2 matter be dispositive of interests of the other members not party to
3 the adjudication or substantially impair or impede their ability to
4 protect their interests.

5 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
6 or refused to act on grounds generally applicable to the CALIFORNIA
7 LABOR SUB-CLASS, making appropriate class-wide relief with respect
8 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
9 DEFENDANT uniformly fails to pay all wages due. Including the correct
10 wages for all time worked by the members of the CALIFORNIA LABOR
11 SUB-CLASS as required by law;

12 (c) Common questions of law and fact predominate as to the members of the
13 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
14 violations of California Law as listed above, and predominate over any
15 question affecting only individual CALIFORNIA LABOR SUB-CLASS
16 Members, and a Class Action is superior to other available methods for
17 the fair and efficient adjudication of the controversy, including
18 consideration of:

- 19 1) The interests of the members of the CALIFORNIA LABOR SUB-
20 CLASS in individually controlling the prosecution or defense of
21 separate actions in that the substantial expense of individual
22 actions will be avoided to recover the relatively small amount of
23 economic losses sustained by the individual CALIFORNIA
24 LABOR SUB-CLASS Members when compared to the substantial
25 expense and burden of individual prosecution of this litigation;
- 26 2) Class certification will obviate the need for unduly duplicative
27 litigation that would create the risk of:

28 A. Inconsistent or varying adjudications with respect to

1 individual members of the CALIFORNIA LABOR SUB-
2 CLASS, which would establish incompatible standards of
3 conduct for the DEFENDANT; and/or,

4 B. Adjudications with respect to individual members of the
5 CALIFORNIA LABOR SUB-CLASS would as a practical
6 matter be dispositive of the interests of the other members
7 not parties to the adjudication or substantially impair or
8 impede their ability to protect their interests;

9 3) In the context of wage litigation because a substantial number of
10 individual CALIFORNIA LABOR SUB-CLASS Members will
11 avoid asserting their legal rights out of fear of retaliation by
12 DEFENDANT, which may adversely affect an individual's job
13 with DEFENDANT or with a subsequent employer, the Class
14 Action is the only means to assert their claims through a
15 representative; and,

16 4) A class action is superior to other available methods for the fair
17 and efficient adjudication of this litigation because class treatment
18 will obviate the need for unduly and unnecessary duplicative
19 litigation that is likely to result in the absence of certification of
20 this action pursuant to Cal. Code of Civ. Proc. § 382.

21 39. This Court should permit this action to be maintained as a Class Action pursuant
22 to Cal. Code of Civ. Proc. § 382 because:

23 (a) The questions of law and fact common to the CALIFORNIA LABOR
24 SUB-CLASS predominate over any question affecting only individual
25 CALIFORNIA LABOR SUB-CLASS Members;

26 (b) A Class Action is superior to any other available method for the fair and
27 efficient adjudication of the claims of the members of the CALIFORNIA
28 LABOR SUB-CLASS because in the context of employment litigation a

- 1 substantial number of individual CALIFORNIA LABOR SUB-CLASS
2 Members will avoid asserting their rights individually out of fear of
3 retaliation or adverse impact on their employment;
- 4 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
5 numerous that it is impractical to bring all members of the CALIFORNIA
6 LABOR SUB-CLASS before the Court;
- 7 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
8 Members, will not be able to obtain effective and economic legal redress
9 unless the action is maintained as a Class Action;
- 10 (e) There is a community of interest in obtaining appropriate legal and
11 equitable relief for the acts of unfair competition, statutory violations and
12 other improprieties, and in obtaining adequate compensation for the
13 damages and injuries which DEFENDANT's actions have inflicted upon
14 the CALIFORNIA LABOR SUB-CLASS;
- 15 (f) There is a community of interest in ensuring that the combined assets of
16 DEFENDANT are sufficient to adequately compensate the members of
17 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 18 (g) DEFENDANT has acted or refused to act on grounds generally applicable
19 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
20 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
21 CLASS as a whole;
- 22 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
23 ascertainable from the business records of DEFENDANT. The
24 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
25 CLASS Members who worked for DEFENDANT in California at any
26 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 27 (i) Class treatment provides manageable judicial treatment calculated to bring
28 a efficient and rapid conclusion to all litigation of all wage and hour

1 related claims arising out of the conduct of DEFENDANT as to the
2 members of the CALIFORNIA LABOR SUB-CLASS.

3
4 **FIRST CAUSE OF ACTION**

5 **For Unlawful Business Practices**

6 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

7 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

8 40. 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 41. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
12 Code § 17021.

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

17 Any person who engages, has engaged, or proposes to engage in unfair
18 competition may be enjoined in any court of competent jurisdiction. The court
19 may make such orders or judgments, including the appointment of a receiver, as
20 may be necessary to prevent the use or employment by any person of any practice
which constitutes 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.

21 Cal. Bus. & Prof. Code § 17203.

22 43. By the conduct alleged herein, DEFENDANT has engaged and continues to
23 engage in a business practice which violates California law, including but not limited to, the
24 applicable Industrial Wage Order(s), the California Code of Regulations and the California
25 Labor Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802,
26 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.
27 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
28 unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

1 49. PLAINTIFF further demands on behalf of himself and each member of the
2 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
3 duty paid rest period was not timely provided as required by law.

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

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

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

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

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

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

3
4 **SECOND CAUSE OF ACTION**

5 **For Failure To Pay Minimum Wages**

6 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

7 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

8 **and Against All Defendants)**

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

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

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

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

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

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

1 61. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
3 result of implementing a uniform policy and practice that denies accurate compensation to
4 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
5 minimum wage pay.

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

12 63. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
14 receive the correct minimum wage compensation for their time worked for DEFENDANT.

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

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

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

1 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
2 correct minimum wages for their time worked.

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

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

22
23 **THIRD CAUSE OF ACTION**

24 **For Failure To Pay Overtime Compensation**

25 **[Cal. Lab. Code §§ 510, *et seq.*]**

26 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
27 **Defendants)**

28 69. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,

1 reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs
2 of this Complaint.

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

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

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

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

19 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
20 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
21 DEFENDANT and were not paid for all the time they worked, including overtime work.

22 75. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
23 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
24 result of implementing a uniform policy and practice that failed to accurately record overtime
25 worked by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied
26 accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR
27 SUB-CLASS for overtime worked, including, the overtime work performed in excess of eight
28 (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any

1 workweek.

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

8 77. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
9 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
10 receive full compensation for overtime worked.

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

19 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
20 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
21 worked that they are entitled to, constituting a failure to pay all earned wages.

22 80. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
23 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
24 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
25 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
26 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
27 failed to accurately record and pay as evidenced by DEFENDANT's business records and
28 witnessed by employees.

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

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

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

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

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

5
6 **FOURTH CAUSE OF ACTION**

7 **For Failure to Provide Required Meal Periods**

8 **[Cal. Lab. Code §§ 226.7 & 512]**

9 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
10 **Defendants)**

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

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

1 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

11
12 **FIFTH CAUSE OF ACTION**

13 **For Failure to Provide Required Rest Periods**

14 **[Cal. Lab. Code §§ 226.7 & 512]**

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
16 **Defendants)**

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

20 90. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
21 time to time required to work in excess of four (4) hours without being provided ten (10) minute
22 rest periods. Further, these employees were denied their first rest periods of at least ten (10)
23 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest
24 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,
25 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of
26 ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA LABOR SUB-
27 CLASS Members were also not provided with one hour wages in lieu thereof. As a result of
28 their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS

1 Members were periodically denied their proper rest periods by DEFENDANT and
2 DEFENDANT's managers.

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

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

12 **SIXTH CAUSE OF ACTION**

13 **For Failure to Reimburse Employees for Required Expenses**

14 **[Cal. Lab. Code § 2802]**

15 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
16 **Defendants)**

17 93. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members
18 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
19 of this Complaint.
20

21 94. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

25 95. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
26 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
27 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
28

1 benefit. DEFENDANT fails to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
 2 CLASS members for expenses which include, but are not limited to, costs related to using their
 3 personal cellular phones all on behalf of and for the benefit of DEFENDANT. DEFENDANT's
 4 uniform policy, practice and procedure is to not reimburse PLAINTIFF and the CALIFORNIA
 5 LABOR SUB-CLASS members for expenses resulting from using their personal cellular
 6 phones for DEFENDANT within the course and scope of their employment for DEFENDANT.
 7 These expenses are necessary to complete their principal job duties. These expenses are
 8 necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's
 9 conduct to assert any waiver of this expectation. Although these expenses were necessary
 10 expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
 11 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR
 12 SUB-CLASS members for these expenses as an employer is required to do under the laws and
 13 regulations of California.

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

18
 19 **SEVENTH CAUSE OF ACTION**

20 **For Failure to Provide Accurate Itemized Statements**

21 **[Cal. Lab. Code § 226]**

22 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
 23 **Defendants)**

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

27 98. Cal. Labor Code § 226 provides that an employer must furnish employees with
 28 an "accurate itemized" statement in writing showing:

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

19 99. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
20 other members of the CALIFORNIA CLASS with complete and accurate wage statements
21 which failed to show, among other things, the correct net and gross wages earned. Cal. Lab.
22 Code § 226 provides that every employer shall furnish each of his or her employees with an
23 accurate itemized wage statement in writing showing, among other things, gross wages earned
24 and all applicable hourly rates in effect during the pay period and the corresponding amount of
25 time worked at each hourly rate. Aside, from the violations listed above in this paragraph,
26 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
27 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
28 time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage

1 statements which violated Cal. Lab. Code § 226.

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

13
 14 **EIGHTH CAUSE OF ACTION**

15 **For Failure to Pay Wages When Due**

16 **[Cal. Lab. Code §§ 201, 202, 203]**

17 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
 18 **Defendants)**

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

22 102. Cal. Lab. Code § 200 provides that:

23 As used in this article:

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

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

28 103. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges

1 an employee, the wages earned and unpaid at the time of discharge are due and payable
2 immediately.”

3 104. Cal. Lab. Code § 202 provides, in relevant part, that:

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

13 105. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR SUB-
14 CLASS Members’ employment contract.

15 106. Cal. Lab. Code § 203 provides:

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

21 107. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
22 Members has terminated and DEFENDANT has not tendered payment of wages, to these
23 employees who missed meal and rest breaks, as required by law.

24 108. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
25 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,
26 PLAINTIFF demands up to thirty days of pay as penalty for not paying all wages due at time
27 of termination for all employees who terminated employment during the CALIFORNIA
28 LABOR SUB-CLASS PERIOD, and demands an accounting and payment of all wages due,
plus interest and statutory costs as allowed by law.

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

- 1 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
2 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 3 B) An order temporarily, preliminarily and permanently enjoining and restraining
4 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 5 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
6 withheld from compensation due to PLAINTIFF and the other members of the
7 CALIFORNIA CLASS; and,
- 8 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
9 for restitution of the sums incidental to DEFENDANT's violations due to
10 PLAINTIFF and to the other members of the CALIFORNIA CLASS.
- 11 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 12 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
13 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
14 action pursuant to Cal. Code of Civ. Proc. § 382;
- 15 B) Compensatory damages, according to proof at trial, including compensatory
16 damages for minimum and overtime compensation due PLAINTIFF and the other
17 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
18 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
19 statutory rate;
- 20 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
21 in which a violation occurs and one hundred dollars (\$100) per each member of
22 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
23 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
24 an award of costs for violation of Cal. Lab. Code § 226;
- 25 D) The wages of all terminated employees from the CALIFORNIA LABOR
26 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
27 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;
- 28 E) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and

- 1 the applicable IWC Wage Order;
- 2 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
- 3 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
- 4 costs of suit; and,
- 5 G) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
- 6 1197.
- 7 3. On all claims:
- 8 A) An award of interest, including prejudgment interest at the legal rate;
- 9 B) Such other and further relief as the Court deems just and equitable; and,
- 10 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
- 11 law, including, but not limited to, pursuant to Labor Code §226, §1194 and/or
- 12 §2802.
- 13

14 Dated: January 14, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

15

16

17 By: _____

18 Norman B. Blumenthal

19 Attorneys for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

Dated: January 21, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for PLAINTIFF