

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

SILICON VALLEY SECURITY & PATROL, INC., a California corporation; and DOES 1 through 50, Inclusive;

ELECTRONICALLY FILED

Superior Court of California
County of Alameda

08/02/2022

Chad Finke, Executive Officer / Clerk of the Court

By: A. Linhares Deputy

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

BRANDON STOCKER, an individual, on behalf of himself, and on behalf of all persons similarly situated,

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

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

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

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

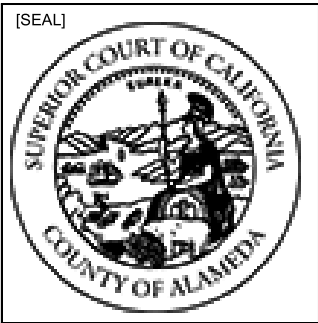
The name and address of the court is:
(El nombre y dirección de la corte es):
Alameda Superior Court - Rene C. Davidson Courthouse
1225 Fallon Street
Oakland, CA 94612

CASE NUMBER: **22CV015476**
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 08/02/2022 Chad Finke, Executive Officer / Clerk of the Court Clerk, by A. Linhares , Deputy
(Fecha) *(Secretario)* *(Adjunto)*

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



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of *(specify)*:
- 3. on behalf of *(specify)*:

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

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23 Attorneys for Plaintiff

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

25 **IN AND FOR THE COUNTY OF ALAMEDA**

26 BRANDON STOCKER, an individual, on behalf
27 of himself, and on behalf of all persons similarly
28 situated,

Plaintiff,

vs.

SILICON VALLEY SECURITY & PATROL,
INC., a California corporation; and DOES 1
through 50, Inclusive;

Defendants.

Case No. 22CV015476

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
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;

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

08/02/2022 at 02:53:45 PM

By: Angela Linhares,
Deputy Clerk

6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. UNLAWFUL DEDUCTIONS IN VIOLATION OF CAL. LAB. CODE § 221.

DEMAND FOR JURY TRIAL

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

THE PARTIES

1. Defendant SILICON VALLEY SECURITY & PATROL, INC. (“DEFENDANT”) is a California corporation that all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

2. DEFENDANT provides, among other services, patrol services and security guards in California, including in the county of Alameda where PLAINTIFF worked.

3. PLAINTIFF was employed by DEFENDANT in California between October 2021 and May 2022 at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

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

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

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

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

THE CONDUCT

A. Meal Period Violations

28 8. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor

1 Code, DEFENDANTS are required to pay PLAINTIFF and CALIFORNIA CLASS for all their time
2 worked, meaning the time during which an employee is subject to the control of an employer, including
3 all the time the employee is suffered or permitted to work. DEFENDANTS required PLAINTIFF and,
4 based on information and belief, the CALIFORNIA CLASS to work without paying them for all the
5 time they were under DEFENDANTS' control.

6 9. Specifically, during the CALIFORNIA CLASS PERIOD, DEFENDANTS required
7 PLAINTIFF, and based on information and belief the CALIFORNIA CLASS, from time to time to
8 work while clocked out during what was supposed to be their off-duty meal break as a result of their
9 overburdened work requirements, inadequate staffing and not being relieved of cordless
10 communication devices during their work shifts. Further, from time to time, PLAINTIFF, and based
11 on information and belief the CALIFORNIA CLASS, were from time-to-time interrupted by work
12 assignments while clocked out for what should have been their off-duty meal break as a result of, among
13 other things, not being relieved of their cordless communication devices during what should have been
14 off-the-clock, duty free meal periods.

15 10. As a result, from time to time, the PLAINTIFF, and based on information and belief the
16 CALIFORNIA CLASS, forfeited minimum wage and overtime compensation by regularly working
17 without their time being accurately recorded and without compensation at the applicable minimum
18 wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF, and
19 based on information and belief the CALIFORNIA CLASS, for all time worked is evidenced by
20 DEFENDANTS' business records.

21 11. Further, from time to time, during the CALIFORNIA CLASS PERIOD, as a result of their
22 rigorous work schedules, inadequate staffing and not being relived of cordless communication devices
23 during his shifts, PLAINTIFF, and based on information and belief the CALIFORNIA CLASS, were
24 from time-to-time unable to take thirty (30) minute duty-free meal breaks and were not fully relieved
25 of duty for their meal periods. PLAINTIFF, and based on information and belief the CALIFORNIA
26 CLASS, were required from time-to-time to perform work as ordered by DEFENDANTS for more than
27 five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from time-
28 to-time failed to provide PLAINTIFF and, based on information and belief the CALIFORNIA CLASS,

1 with a second off-duty meal period for some workdays in which these employees were required by
2 DEFENDANTS to work ten (10) hours of work from time-to-time. PLAINTIFF, and based on
3 information and belief the CALIFORNIA CLASS, therefore forfeited meal breaks without additional
4 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

5 12. Finally, in violation of the applicable sections of the California Labor Code and the
6 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter
7 of company policy, practice and procedure, intentionally, knowingly and systematically failed to
8 compensate PLAINTIFF, and based on information and belief the CALIFORNIA CLASS, an
9 additional hour of premium pay for missed meal periods from time to time. This uniform policy and
10 practice of DEFENDANTS is intended to purposefully avoid the payment for all time worked as
11 required by California law which allows DEFENDANTS to illegally profit and gain an unfair
12 advantage over competitors who complied with the law.

13 **B. Rest Period Violations**

14 13. During the CALIFORNIA CLASS PERIOD, PLAINTIFF, and based on information and
15 belief the CALIFORNIA CLASS, were required from time-to-time to work in excess of four (4) hours
16 without being provided ten (10) minute rest periods as a result of their overburdened work
17 requirements, inadequate staffing and not being relieved of cordless communication devices during their
18 shifts. Further, these employees were denied their first rest periods of at least ten (10) minutes for some
19 shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at
20 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time,
21 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
22 hours or more from time to time. PLAINTIFF, and based on information and belief the CALIFORNIA
23 CLASS, were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work
24 schedules, inadequate staffing and not being relieved of cordless communication devices during their
25 shifts, PLAINTIFF, and based on information and belief the CALIFORNIA CLASS, were from time
26 to time denied their proper rest periods by DEFENDANTS and their managers.

27 14. Finally, in violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter

1 of company policy, practice and procedure, intentionally, knowingly and systematically failed to
2 compensate PLAINTIFF, and based on information and belief the CALIFORNIA CLASS, an
3 additional hour of premium pay for missed rest periods from time to time. This uniform policy and
4 practice of DEFENDANTS is intended to purposefully avoid the payment for all time worked as
5 required by California law which allows DEFENDANTS to illegally profit and gain an unfair
6 advantage over competitors who complied with the law.

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

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

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

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

26 18. However, from-time-to-time, when calculating the regular rate of pay, in those pay
27 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double time,
28 paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary

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

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

25 **D. Reporting Time Claim**

26 20. The applicable Wage Order requires that on each workday that an employee reports for
27 work, as scheduled, but is not put to work or is furnished less than half of the employee's usual or
28 scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no

1 event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay,
2 which shall not be less than the minimum wage. The applicable Wage Order denominates this as
3 "Reporting Time Pay."

4 21. Specifically, during the CALIFORNIA CLASS PERIOD, DEFENDANTS required
5 PLAINTIFF, and based on information and belief the CALIFORNIA CLASS, to report to work when
6 assigned to their various shifts. From time-to-time, over the course of their employment, PLAINTIFF,
7 and based on information and belief the CALIFORNIA CLASS, reported to work as required by
8 DEFENDANTS. On these days, PLAINTIFF, and based on information and belief the CALIFORNIA
9 CLASS, were not put to work and/or were not furnished with work for less than half of their scheduled
10 shift. When PLAINTIFF, and based on information and belief the CALIFORNIA CLASS, report to
11 work, as scheduled, but are furnished less than half of their scheduled day's work, PLAINTIFF, and
12 based on information and belief the CALIFORNIA CLASS, are not compensated with Reporting Time
13 pay, as required by the applicable Wage Order, in that they are not paid a minimum of two hours or for
14 half of their scheduled day's work, not to exceed four hours.

15 **E. Unreimbursed Expenses**

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

27 23. During the CALIFORNIA CLASS PERIOD, in the course of their employment
28 PLAINTIFF, and based on information and belief the CALIFORNIA CLASS, as a business expense,

1 were required by DEFENDANTS to use their own personal cellular phones and personal vehicles for
2 work related issues as a result of and in furtherance of their job duties as employees for DEFENDANTS.
3 Notwithstanding, PLAINTIFF, and based on information and belief the CALIFORNIA CLASS, were
4 never reimbursed or indemnified by DEFENDANTS for the cost associated with the use of their
5 personal cellular phones and personal vehicles for DEFENDANTS' benefit. As a result, in the course
6 of their employment with DEFENDANTS, PLAINTIFF, and based on information and belief the
7 CALIFORNIA CLASS, incurred unreimbursed business expenses which included, but were not limited
8 to, costs related to the use of their personal cellular phones and personal vehicles all on behalf of and
9 for the benefit of DEFENDANTS.

10 **F. Wage Statement Claim**

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

19 25. From time-to-time during the CLASS PERIOD, when PLAINTIFF, and based on
20 information and belief the CALIFORNIA CLASS, missed meal and rest breaks, or were paid inaccurate
21 missed meal and rest period premiums, DEFENDANTS also failed to provide PLAINTIFF, and based
22 on information and belief the CALIFORNIA CLASS, with complete and accurate wage statements
23 which failed to show, among other things, all applicable hourly rates in effect during the pay period
24 and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty
25 payments or missed meal and rest periods.

26 26. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
27 employees with an accurate itemized wage statement in writing showing, among other things, gross
28 wages earned, total hours worked, net wages earned, all applicable hourly rates in effect during the pay

1 period and the corresponding amount of time worked at each hourly rate, and the name and address of
2 the legal entity that is the employer. Aside, from the violations listed above in this paragraph,
3 DEFENDANTS also failed to issue to PLAINTIFF, and based on information and belief the
4 CALIFORNIA CLASS, an itemized wage statement that lists all the requirements under California
5 Labor Code 226 *et seq.* As a result, DEFENDANTS provided PLAINTIFF, and based on information
6 and belief the CALIFORNIA CLASS, with wage statements which violated Cal. Lab. Code § 226.

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

11 **G. Unlawful Deductions**

12 28. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF'S and
13 the CALIFORNIA CLASS' pay without explanations and without authorization to do so or notice to
14 PLAINTIFF and the CALIFORNIA CLASS. As a result, DEFENDANT violated Labor Code § 221.

15 29. To date, DEFENDANT has not fully paid PLAINTIFF the overtime compensation, and
16 the meal and rest break premiums still owed to him or any penalty wages owed to him under Cal. Lab.
17 Code § 203.

18 30. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
19 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the California
20 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by engaging in a
21 company-wide policy and procedure which failed to accurately calculate and record all missed meal
22 and rest periods by PLAINTIFF and other CALIFORNIA CLASS Members. The proper recording of
23 these employees' missed meal and rest breaks is the DEFENDANT's burden. As a result of
24 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT failed to
25 properly calculate and/or pay all required compensation for work performed by the members of the
26 CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
27 thereunder as herein alleged.

28 31. Specifically, as to PLAINTIFF, DEFENDANT failed to provide all the legally required

1 off-duty meal and rest breaks to him as required by the applicable Wage Order and Labor Code and
2 failed to pay him all minimum and overtime wages due to him. DEFENDANT did not have a policy
3 or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and also failed to
4 compensate PLAINTIFF for his missed meal and rest breaks. The nature of the work performed by the
5 PLAINTIFF did not prevent him from being relieved of all of his duties for the legally required off-
6 duty meal periods. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally
7 required meal periods is evidenced by DEFENDANT's business records. As a result of DEFENDANT
8 not accurately recording all missed meal and rest periods and/or minimum and overtime wages due, the
9 wage statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,
10 Labor Code Section 226(a). The amount in controversy for PLAINTIFF individually does not exceed
11 the sum or value of \$75,000.

12 **JURISDICTION AND VENUE**

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

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

22 **THE CALIFORNIA CLASS**

23 34. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
24 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action,
25 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who
26 are or previously were employed by DEFENDANT in California and classified as non-exempt
27 employees (the "CALIFORNIA CLASS") at any time during the period beginning on four (4) years
28 prior to the filing of this Complaint and ending on the date as determined by the Court (the

1 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
2 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

17 37. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA CLASS
18 Members is impracticable.

19 38. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
20 California law by:

21 a. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
22 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having in place company
23 policies, practices and procedures that uniformly and systematically failed to record and pay
24 PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, including
25 minimum wages owed, overtime wages owed and reporting time pay for work performed by these
26 employees;

27 b. Committing an act of unfair competition in violation of the UCL, by failing to
28 provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required

1 meal and rest periods; and,

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

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

8 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
9 joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the
10 parties and the Court;

11 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
12 raised in this Complaint are common to the CALIFORNIA CLASS and will apply uniformly to every
13 CALIFORNIA CLASS Member;

14 c. The claims of the representative PLAINTIFF are typical of the claims of each
15 member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS Members, was
16 classified as an independent contractor upon hiring based on the defined corporate policies and practices
17 and labors under DEFENDANT's systematic procedure that failed to properly classify the PLAINTIFF
18 and the CALIFORNIA CLASS Members. PLAINTIFF sustained economic injury as a result of
19 DEFENDANT's employment practices. PLAINTIFF and the CALIFORNIA CLASS Members were
20 and are similarly or identically harmed by the same unlawful, unfair, deceptive and persuasive pattern
21 of misconduct engaged in by DEFENDANT by deceptively telling all the CALIFORNIA CLASS
22 Members that they were not entitled to minimum wages, the employer's share of payment of payroll
23 taxes and mandatory insurance, and reimbursement for business expenses based on the defined corporate
24 policies and practices, and unfairly failed to pay these employees who were improperly classified as
25 independent contractors; and,

26 d. The representative PLAINTIFF will fairly and adequately represent and protect
27 the interest of the CALIFORNIA CLASS, and has retained counsel who is competent and experienced
28 in Class Action litigation. There are no material conflicts between the claims of the representative

1 PLAINTIFF and the CALIFORNIA CLASS Members that would make class certification inappropriate.
2 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all employees in the
3 CALIFORNIA CLASS.

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

6 a. Without class certification and determination of declaratory, injunctive, statutory
7 and other legal questions within the class format, prosecution of separate actions by individual members
8 of the CALIFORNIA CLASS will create the risk of:

9 i. Inconsistent or varying adjudications with respect to individual members
10 of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties
11 opposing the CALIFORNIA CLASS; and/or,

12 ii. Adjudication with respect to individual members of the CALIFORNIA
13 CLASS which would as a practical matter be dispositive of the interests of the other members not party
14 to the adjudication or substantially impair or impeded their ability to protect their interests.

15 b. The parties opposing the CALIFORNIA CLASS have acted on grounds generally
16 applicable to the CALIFORNIA CLASS making appropriate class-wide relief with respect to the
17 CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and treated the
18 CALIFORNIA CLASS Members as independent contractors and, thereafter, uniformly failed to take
19 proper steps to determine whether the CALIFORNIA CLASS Members were properly classified as
20 independent contractors, and thereby denied these employees' wages and payments for business
21 expenses and the employer's share of payroll taxes and mandatory insurance as required by law.

22 i. With respect to the First Cause of Action, the final relief on behalf of the
23 CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim the
24 PLAINTIFF seeks declaratory relief holding that DEFENDANT's policies and practices constitute
25 unfair competition, along with incidental equitable relief as may be necessary to remedy the conduct
26 declared to constitute unfair competition.

27 c. Common questions of law and fact exist as to members of the
28 CALIFORNIA CLASS with respect to the practices and violations of California and federal law as listed

1 above, and predominate over any question affecting only individual members, and a Class Action is
2 superior to other available methods for the fair and efficient adjudication of the controversy, including
3 consideration of:

4 i. The interests of the members of the CALIFORNIA CLASS in individually
5 controlling the prosecution or defense of separate actions in that the substantial expense of individual
6 actions will be avoided to recover the relatively small amount of economic losses sustained by the
7 individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of
8 individual prosecution of this litigation;

9 ii. Class certification will obviate the need for unduly duplicative litigation
10 that would create the risk of:

11 A. Inconsistent or varying adjudications with respect to individual
12 members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for
13 the DEFENDANT; and/or,

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

17 iii. In the context of wage litigation because a substantial number of individual
18 CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by
19 DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent
20 employer, the Class Action is the only means to assert their claims through a representative; and

21 iv. A class action is superior to other available methods for the fair and
22 efficient adjudication of this litigation because class treatment will obviate the need for unduly and
23 unnecessary duplicative litigation that is likely to result in the absence of certification of this action
24 pursuant to Cal. Code of Civ. Proc. § 382.

25 41. The Court should permit this Action to be maintained as a Class Action pursuant to Cal. Code
26 of Civ. Proc. § 382 because:

27 a. The questions of law and fact common to the CALIFORNIA CLASS predominate
28 over any question affecting only individual CALIFORNIA CLASS Members because the

1 DEFENDANT's employment practices are uniform and systematically applied with respect to the
2 CALIFORNIA CLASS;

3 b. A Class Action is superior to any other available method for the fair and efficient
4 adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of
5 employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid
6 asserting their rights individually out of fear of retaliation or adverse impact on their employment;

7 c. The members of the CALIFORNIA CLASS are so numerous that it is impractical
8 to bring all members of the CALIFORNIA CLASS before the Court;

9 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
10 obtain effective and economic legal redress unless the action is maintained as a Class Action;

11 e. There is a community of interest in obtaining appropriate legal and equitable relief
12 for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate
13 compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the
14 CALIFORNIA 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 the CALIFORNIA CLASS for
17 the injuries sustained;

18 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
19 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the
20 CALIFORNIA CLASS as a whole;

21 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
22 business records of DEFENDANT; and,

23 i. Class treatment provides manageable judicial treatment calculated to bring an
24 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the
25 conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

26 42. DEFENDANT maintains records from which the Court can ascertain and identify by
27 name and job title, each of DEFENDANT's employees who have been systematically, intentionally and
28 uniformly subjected to DEFENDANT's corporate policies, practices and procedures as herein alleged.

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

3 **THE CALIFORNIA LABOR SUB-CLASS**

4 43. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and
5 Ninth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
6 CLASS who are or previously were employed by DEFENDANT in California and who were classified
7 as non-exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period
8 beginning on four (4) years prior to the filing of this Complaint and ending on the date as determined
9 by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc.
10 § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
11 Members is under five million dollars (\$5,000,000.00).

12 44. DEFENDANT, as a matter of company policy, practice and procedure, and in violation
13 of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and
14 the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice
15 whereby DEFENDANT failed to correctly calculate compensation for the time worked by PLAINTIFF
16 and the other members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to
17 these employees, even though DEFENDANT enjoyed the benefit of this work, required employees to
18 perform this work and permitted or suffered to permit this work. DEFENDANT has uniformly denied
19 these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in
20 order to unfairly cheat the competition and unlawfully profit.

21 45. DEFENDANT maintains records from which the Court can ascertain and identify by job
22 title each of DEFENDANT’s employees who as CALIFORNIA LABOR SUB-CLASS Members have
23 been systematically, intentionally and uniformly misclassified as independent contractors as a matter of
24 DEFENDANT’s corporate policy, practices and procedures. PLAINTIFF will seek leave to amend the
25 complaint to include these additional job titles when they have been identified.

26 46. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
27 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

28 47. Common questions of law and fact exist as to members of the CALIFORNIA LABOR

1 SUB-CLASS, including, but not limited to, the following:

2 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
3 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for missed meal and rest
4 breaks in violation of the California Labor Code and California regulations and the applicable California
5 Wage Order;

6 b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members
7 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;

8 c. Whether DEFENDANT has engaged in unfair competition by the above-listed
9 conduct;

10 d. The proper measure of damages and penalties owed to the members of the
11 CALIFORNIA LABOR SUB-CLASS; and,

12 e. Whether DEFENDANT's conduct was willful.

13 48. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under
14 California law by:

15 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF
16 and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which
17 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;

18 b. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
19 the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty
20 (30) minute meal breaks and the legally required rest breaks;

21 c. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
22 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
23 wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

24 d. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
25 CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties;
26 and,

27 e. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
28 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing

1 showing the corresponding correct amount of wages earned by the employee; and,

2 f. Violating Cal. Lab. Code § 221 by unlawfully deducting wages from
3 PLAINTIFF’S and other members of the CALIFORNIA CLASS’ pay.

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

6 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
7 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and
8 the disposition of their claims as a class will benefit the parties and the Court;

9 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
10 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply
11 uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;

12 c. The claims of the representative PLAINTIFF are typical of the claims of each
13 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all other members of the
14 CALIFORNIA LABOR SUB-CLASS was improperly classified as an independent contractor and was
15 thus denied minimum wage pay and meal and rest breaks, among other things, as a result of
16 DEFENDANT’S systematic classification practices. PLAINTIFF and all other members of the
17 CALIFORNIA LABOR SUB-CLASS sustained economic injuries arising from DEFENDANT’S
18 violations of the laws of California; and,

19 d. The representative PLAINTIFF will fairly and adequately represent and protect
20 the interest of the CALIFORNIA LABOR SUB-CLASS and has retained counsel who are competent
21 and experienced in Class Action litigation. There are no material conflicts between the claims of the
22 representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would
23 make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will
24 vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

27 a. Without class certification and determination of declaratory, injunctive, statutory
28 and other legal questions within the class format, prosecution of separate actions by individual members

1 of the CALIFORNIA LABOR SUB-CLASS will create the risk of:

2 i. Inconsistent or varying adjudications with respect to individual members
3 of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct
4 for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or,

5 ii. Adjudication with respect to individual members of the CALIFORNIA
6 LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members
7 not party to the adjudication or substantially impair or impede their ability to protect their interests.

8 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
9 refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making
10 appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that
11 the DEFENDANT uniformly classified and treated the members of the CALIFORNIA LABOR SUB-
12 CLASS as independent contractors and, thereafter, uniformly failed to take proper steps to determine
13 whether the CALIFORNIA LABOR SUB-CLASS Members were properly classified as independent
14 contractors, and thereby denied these employees the protections afforded to them under the California
15 Labor Code;

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

21 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in
22 individually controlling the prosecution or defense of separate actions in that the substantial expense of
23 individual actions will be avoided to recover the relatively small amount of economic losses sustained
24 by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial
25 expense and burden of individual prosecution of this litigation;

26 ii. Class certification will obviate the need for unduly duplicative litigation that
27 would create the risk of:

28 1. Inconsistent or varying adjudications with respect to individual members

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

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

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

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

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

17 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
18 CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS
19 Members;

20 b. A Class Action is superior to any other available method for the fair and efficient
21 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the
22 context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-
23 CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse
24 impact on their employment;

25 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
26 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

27 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
28 not be able to obtain effective and economic legal redress unless the action is maintained as a Class

1 Action;

2 e. There is a community of interest in obtaining appropriate legal and equitable relief
3 for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate
4 compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the
5 CALIFORNIA LABOR SUB-CLASS;

6 f. There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR
8 SUB-CLASS for the injuries sustained;

9 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
10 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect
11 to the CALIFORNIA LABOR SUB-CLASS as a whole;

12 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
13 ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS
14 consists of all CALIFORNIA CLASS Members who are or previously were employed by
15 DEFENDANT in California as Drivers and classified as independent contractors during the
16 CALIFORNIA LABOR SUB-CLASS PERIOD; and,

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

20 **FIRST CAUSE OF ACTION**

21 **For Unlawful Business Practices**

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

23 **(By PLAINTIFF and the CALIFORNIA CLASS Against All DEFENDANT and DOES 1 -50)**

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

26 53. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof. Code §
27 17021.

28 54. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines unfair

1 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes
2 injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

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

11 Cal. Bus. & Prof. Code § 17203.

12 55. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
13 business practice which violates California law, including but not limited to, the applicable Industrial
14 Wage Order(s), the California Code of Regulations and the California Labor Code including Sections
15 201, 202, 203, 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198 & 2802, for which this
16 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as
17 may be necessary to prevent and remedy the conduct held to constitute unfair competition, including
18 restitution of wages wrongfully withheld.

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

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

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

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

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

12 61. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA
13 CLASS member, one (1) hour of pay for each workday in which an off duty paid rest period was not
14 timely provided as required by law.

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

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

26 64. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,
27 seek such relief as may be necessary to restore to them the money and property which DEFENDANT
28 has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been

1 deprived, by means of the above described unlawful and unfair business practices, including earned but
2 unpaid wages for all overtime worked.

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

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

14 **SECOND CAUSE OF ACTION**

15 **For Failure to Pay Overtime Compensation**

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

17 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Against DEFENDANT and DOES**
18 **1 – 50)**

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

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

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

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

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

8 72. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
9 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
10 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

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

24 75. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
25 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive full
26 compensation for all overtime worked.

27 76. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the
28 overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other

1 members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFF and the other members of
2 the CALIFORNIA LABOR SUB-CLASS are not subject to a valid collective bargaining agreement that
3 would preclude the causes of action contained herein this Complaint. Rather, the PLAINTIFF brings
4 this Action on behalf of himself and the CALIFORNIA LABOR SUB-CLASS based on
5 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of California.

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

9 78. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
10 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in excess of
11 the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though
12 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were required to work,
13 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay using the
14 applicable overtime rate as evidenced by DEFENDANT's business records and witnessed by
15 employees.

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

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

27 81. In performing the acts and practices herein alleged in violation of California labor laws,
28 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time

1 worked and provide them with the requisite overtime compensation, DEFENDANT acted and continues
2 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
3 CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their legal rights, or
4 the consequences to them, and with the despicable intent of depriving them of their property and legal
5 rights, and otherwise causing them injury in order to increase company profits at the expense of these
6 employees

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

18 **THIRD CAUSE OF ACTION**

19 **For Failure to Pay Minimum Wages**

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

21 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against DEFENDANT and**
22 **DOES 1 - 50)**

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

26 84. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a
27 claim for DEFENDANT's willful and intentional violations of the California Labor Code and the
28 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and

1 pay minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

9 88. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they
11 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
12 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
13 CALIFORNIA LABOR SUB-CLASS.

14 89. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without
15 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
16 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF and the
17 other members of the CALIFORNIA LABOR SUB-CLASS regarding minimum wage pay.

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

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

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

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

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

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

21 96. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
22 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as
23 the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
24 Labor Code and/or other applicable statutes. DEFENDANT's conduct as alleged herein was willful,
25 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
26 Members are entitled to seek and recover statutory costs.

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Against DEFENDANT and DOES**
5 **1 – 50)**

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

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

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

1 all wages earned and due, interest, penalties, expenses and costs of suit.

2 **SIXTH CAUSE OF ACTION**

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

4 **[Cal. Lab. Code § 226]**

5 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Against DEFENDANTS and**
6 **DOES 1 - 50)**

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

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

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

28 107. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other

1 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to
2 show, among other things, the correct gross and net wages earned, all applicable hourly rates in effect
3 during the pay period and the corresponding number of hours worked at each hourly rate by the
4 employee and correct amount of time worked in violation of Cal. Lab. Code § 226. Aside, from the
5 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized
6 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
7 DEFENDANT from time to time provided PLAINTIFF and the other members of the CALIFORNIA
8 CLASS with wage statements which violated Cal. Lab. Code § 226.

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

20 **SEVENTH CAUSE OF ACTION**

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

22 **[Cal. Lab. Code § 2802]**

23 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Against DEFENDANTS and**
24 **DOES 1 – 50)**

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

28 110. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

6 111. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to
7 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
8 required expenses incurred in the discharge of their job duties for DEFENDANT's benefit.
9 DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
10 for expenses which included, but were not limited to, costs related to using their personal cellular phones
11 and personal vehicles all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF
12 and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell
13 phones and personal vehicles to respond to work related issues. DEFENDANT's uniform policy,
14 practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
15 members for expenses resulting from using their personal cellular phones and personal vehicles for
16 DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses
17 were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's
18 conduct to assert any waiver of this expectation. Although these expenses were necessary expenses
19 incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed
20 to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
21 these expenses as an employer is required to do under the laws and regulations of California

22 112. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by
23 them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for
24 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate
25 and costs under Cal. Lab. Code § 2802. There was no definite term in PLAINTIFF's or any
26 CALIFORNIA LABOR SUB-CLASS Members' employment contract.

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

3 **(Cal. Lab. Code §§201, 202, 203)**

4 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
5 **Defendants)**

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

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

10 As used in this article:(a) "Wages" includes all amounts for labor performed by employees of
11 every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
12 Commission basis, or other method of calculation. (b) "Labor" includes labor, work, or service
13 whether rendered or performed under contract, subcontract, partnership, station plan, or other
14 agreement if the labor to be paid for is performed personally by the person demanding payment.

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

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

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

27 117. There was no definite term in Plaintiff Lane or any CALIFORNIA LABOR SUB-CLASS
28 Members’ employment contract.

118. Cal. Lab. Code § 203 provides:

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

1 119. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
2 Members terminated and DEFENDANTS have not tendered payment of wages, to these
3 employees who missed meal and rest breaks, worked off the clock, or reported to work
4 without pay, as required by law.

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

11 **NINTH CAUSE OF ACTION**

12 **Unlawful Deductions**

13 **[Cal. Labor Code §§ 221 and 223]**

14 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
15 **Defendants)**

16 121. PLAINTIFF incorporate herein by specific reference, as though fully set forth, the
17 allegations in the preceding paragraphs.

18 122. During the CLASS PERIOD, DEFENDANT regularly and consistently maintained
19 corporate policies and procedures designed to reduce labor costs by reducing or minimizing the amount
20 of compensation paid to its employees, especially overtime compensation.

21 123. DEFENDANT made unlawful deductions from PLAINTIFF and the other
22 CALIFORNIA LABOR SUB-CLASS Members' paychecks earned by PLAINTIFF and the other
23 CALIFORNIA LABOR SUB-CLASS Members during various pay periods.

24 124. Labor Code § 221 provides it is unlawful for any employer to collect or receive from an
25 employee any part of wages theretofore paid by employer to employee.

26 125. Labor Code § 223 provides that where any statute or contract requires an employer to
27 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting
28 to pay the wage designated by statute or by contract. Labor Code section 225 further provides that the

1 violation of any provision of Labor Code §§ 221 and 223 is a misdemeanor.

2 126. As a result of the conduct alleged above, DEFENDANTS unlawfully collected or
3 received from PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS Members part of the
4 wages paid to their employees.

5 127. Wherefore, PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS Members
6 demand the return of all wages unlawfully deducted from the paychecks, including interest thereon,
7 penalties, reasonable attorneys' fees, and costs of suit pursuant to Labor Code §§ 225.5 and 1194.

8 **PRAYER FOR RELIEF**

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

11 1. On behalf of the CALIFORNIA CLASS:

12 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as
13 a class action pursuant to Cal. Code of Civ. Proc. § 382;

14 B) An order temporarily, preliminarily and permanently enjoining and restraining
15 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

16 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld
17 from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

18 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for
19 restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other
20 members of the CALIFORNIA CLASS.

21 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

22 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth
23 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to
24 Cal. Code of Civ. Proc. § 382;

25 B) Compensatory damages, according to proof at trial, including compensatory damages for
26 overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at
28 the statutory rate;

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

5 D) Meal and rest period compensation pursuant to California Labor Code Section 226.7 and
6 the applicable IWC Wage Order;

7 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
8 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit; and,

9 F) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
10 and,

11 G) The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS
12 as a penalty from the due date thereof at the same rate until paid or until an action therefore is
13 commenced, in accordance with Cal. Lab. Code § 203; and

14 3. On all claims:


15 A) An award of interest, including prejudgment interest at the legal rate;

16 B) Such other and further relief as the Court deems just and equitable; and,

17 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
18 including, but not limited to, pursuant to Labor Code §226, §1194 and/or §2802.

19
20 Dated: August 2, 2022

Respectfully Submitted,
ZAKAY LAW GROUP, APLC


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23 By: 
Shani O. Zakay, Esq.
Attorneys for PLAINTIFFS
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DEMAND FOR JURY TRIAL

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

Dated: August 2, 2022

Respectfully Submitted,
ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay, Esq.
Attorneys for PLAINTIFF

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