

SUMMONS (CITACION JUDICIAL)

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

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
11/13/2019 6:52 PM
By: Ninette Height, Deputy

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

STOWASSER BUICK-GMC, INC. a California Corporation; and DOES
1-50, Inclusive,

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

BRIAN REYES, an individual; EDGARDO MARTINEZ; an individual; PEDRO MURGUIA; an individual; ELIAS BARBA- REYES; an individual; JESUS ROCHA; an individual; STEVEN SALAZAR; an individual; JONATHAN ZARATE-ARANA; an individual, on behalf of themselves and on behalf of all person similarly situated 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): Santa Barbara Superior Court (North)

312-C East Cook Street
Santa Maria, CA 93454

CASE NUMBER: 19CV06183
(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., 3990 Old Town Avenue, Ste C204 San Diego, California 92110 Telephone: (619) 255-9047

DATE:

(Fecha) 11/13/2019

Clerk, by

(Secretario) /s/ Ninette Height

, Deputy

(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 (specify):	
4. by personal delivery on (date):

1 **ZAKAY LAW GROUP, APLC**
Shani O. Zakay (State Bar #277924)
2 3990 Old Town Ave. Suite C204
San Diego, CA 92110
3 Telephone: (619) 255-9047
Facsimile: (858) 404-9203
4 Website: www.zakaylaw.com

5 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
Norman B. Blumenthal (State Bar #068687)
6 Kyle R. Nordrehaug (State Bar #205975)
2255 Calle Clara
7 La Jolla, CA 92037
Telephone: (858)551-1223
8 Facsimile: (858) 551-1232
Website: www.bamlawca.com

9 Attorneys for Plaintiffs

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
IN AND FOR THE COUNTY OF SANTA BARBARA

13 BRIAN REYES, an individual; EDGARDO
MARTINEZ; an individual; PEDRO
14 MURGUIA; an individual; ELIAS BARBA-
REYES; an individual; JESUS ROCHA; an
15 individual; STEVEN SALAZAR; an
16 individual; JONATHAN ZARATE-ARANA;
an individual, on behalf of themselves and on
17 behalf of all persons similarly situated and the
State of California,

18
19 Plaintiff,

20 v.

21 STOWASSER BUICK-GMC, INC. a
California Corporation; and DOES 1-50,
22 Inclusive,

23 Defendants.

Case No:19CV06183

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 3) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 5) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO TIMELY PAY WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203; and
- 8) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiffs BRIAN REYES, EDGARDO MARTINEZ; PEDRO MURGUIA; ELIAS BARBA-
2 REYES; JESUS ROCHA; STEVEN SALAZAR; JONATHAN ZARATE-ARANA
3 (“PLAINTIFFS”), individuals, on behalf of themselves and all other similarly situated
4 current and former employees, alleges on information and belief, except for her own
5 acts and knowledge which are based on personal knowledge, the following:

6 **THE PARTIES**

7 1. Defendant Stowasser Buick-GMC, Inc. (“DEFENDANT”) is a California
8 corporation and at all relevant times mentioned herein conducted and continues to conduct
9 substantial and regular business throughout the State of California.

10 2. DEFENDANT retails automobile vehicles. DEFENDANT offers new and used
11 cars as well as financing, maintenance, and repair services.

12 3. PLAINTIFF BRIAN REYES was employed by DEFENDANT in California
13 from February of 2018 to April of 2019 and was at all times during his employment with
14 DEFENDANT entitled to be paid minimum wages and entitled to the legally required off-duty
15 meal periods. PLAINTIFF was also required to be paid for his rest periods as DEFENDANT
16 paid PLAINTIFF only commissions wages for certain pay periods. DEFENDANT did not
17 separately compensate PLAINTIFF for his rest periods.

18 4. PLAINTIFF EDGARDO MARTINEZ has been employed by DEFENDANT in
19 California since September 2017 and has been at all times during his employment with
20 DEFENDANT entitled to be paid minimum wages and entitled to the legally required off-duty
21 meal periods. PLAINTIFF is also required to be paid for his rest periods as DEFENDANT paid
22 PLAINTIFF only commissions wages for certain pay periods. DEFENDANT has not been
23 separately compensate PLAINTIFF for his rest periods.

24 5. PLAINTIFF PEDRO MURGUIA has been employed by DEFENDANT in
25 California since 2003 and has been at all times during his employment with DEFENDANT
26 entitled to be paid minimum wages and entitled to the legally required off-duty meal periods.
27 PLAINTIFF is also required to be paid for his rest periods as DEFENDANT paid PLAINTIFF
28 only commissions wages for certain pay periods. DEFENDANT has not been separately
compensate PLAINTIFF for his rest periods.

1 6. PLAINTIFF ELIAS BARBA-REYES has been employed by DEFENDANT in
2 California since January 2014 and has been at all times during his employment with
3 DEFENDANT entitled to be paid minimum wages and entitled to the legally required off-duty
4 meal periods. PLAINTIFF is also required to be paid for his rest periods as DEFENDANT paid
5 PLAINTIFF only commissions wages for certain pay periods. DEFENDANT has not been
6 separately compensate PLAINTIFF for his rest periods.

7 7. PLAINTIFF JESUS ROCHA was employed by DEFENDANT in California
8 from July 2013 to November 2017 and was at all times during his employment with
9 DEFENDANT entitled to be paid minimum wages and entitled to the legally required off-duty
10 meal periods. PLAINTIFF was also required to be paid for his rest periods as DEFENDANT
11 paid PLAINTIFF only commissions wages for certain pay periods. DEFENDANT did not
12 separately compensate PLAINTIFF for his rest periods.

13 8. PLAINTIFF STEVEN SALAZAR was employed by DEFENDANT in
14 California from November 2012 to June 2017 and was at all times during his employment with
15 DEFENDANT entitled to be paid minimum wages and entitled to the legally required off-duty
16 meal periods. PLAINTIFF was also required to be paid for his rest periods as DEFENDANT
17 paid PLAINTIFF only commissions wages for certain pay periods. DEFENDANT did not
18 separately compensate PLAINTIFF for his rest periods.

19 9. PLAINTIFF JONATHAN ZARATE-ARANA was employed by DEFENDANT
20 in California from August 2013 to April 2018 and was at all times during his employment with
21 DEFENDANT entitled to be paid minimum wages and entitled to the legally required off-duty
22 meal periods. PLAINTIFF was also required to be paid for his rest periods as DEFENDANT
23 paid PLAINTIFF only commissions wages for certain pay periods. DEFENDANT did not
24 separately compensate PLAINTIFF for his rest periods.

25 10. PLAINTIFFS bring this Class Action on behalf of themselves and a California
26 class, defined as all individuals who are or previously were employed by DEFENDANT in
27 California and paid on a draw vs. commission compensation scheme (the "CALIFORNIA
28 CLASS") at any time during the period beginning on the date four (4) years prior to the filing of
this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS

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

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

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

23 13. The agents, servants and/or employees of the Defendants and each of them acting
24 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
25 agent, servant and/or employee of the Defendants, and personally participated in the conduct
26 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
27 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
28 Defendants are jointly and severally liable to PLAINTIFFS and the other members of the
Defendants’ agents, servants and/or employees.

THE CONDUCT

1
2 14. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
3 the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA CLASS
4 Members as required by the applicable Wage Order and Labor Code. The nature of the work
5 performed by PLAINTIFFS and CALIFORNIA CLASS MEMBERS did not prevent these
6 employees from being relieved of all of their duties for the legally required off-duty meal
7 periods. DEFENDANT’S meal period policies and practices were unlawful because
8 PLAINTIFFS and other CALIFORNIA CLASS Members were far too over-booked and
9 overworked to take a timely off-duty thirty (30) minute meal period. As a result of their
10 rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members were often
11 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
12 DEFENDANT’s failure to provide PLAINTIFFS and the CALIFORNIA CLASS Members with
13 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
14 DEFENDANT’s business records. As a result, PLAINTIFFS and other members of the
15 CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
16 accordance with DEFENDANT’s strict corporate policy and practice.

17 15. Further, DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA
18 CLASS Members with a second off-duty meal period on workdays in which these employees
19 were required by DEFENDANT to work ten (10) hours of work from time to time. As a result,
20 DEFENDANT’S failure to provide PLAINTIFFS and the CALIFORNIA CLASS Members
21 with legally required meal breaks is evidenced by DEFENDANT’s business records which
22 contain no record of these breaks.

23 16. In addition, because of DEFENDANT’s commission pay plan described herein,
24 DEFENDANT failed to compensate PLAINTIFFS and CALIFORNIA CLASS Members for
25 their rest periods as required by the applicable Wage Order and Labor Code. DEFENDANT did
26 not have a policy or practice which paid for off-duty rest periods to PLAINTIFFS and the other
27 CALIFORNIA CLASS Members. As a result, DEFENDANT’s failure to provide PLAINTIFFS
28

1 and the CALIFORNIA CLASS Members with all the legally required paid rest periods is
2 evidenced by DEFENDANT’s business records.

3 17. On numerous occasions, PLAINTIFFS and other CALIFORNIA CLASS
4 Members were required to work while not clocked in. DEFENDANT maintained a company-
5 wide policy of refusing to pay CALIFORNIA CLASS Members, like PLAINTIFFS, for all
6 hours worked. Specifically, DEFENDANT maintained a company-wide pattern and practice of
7 altering employees’ timecards to eliminate numerous hours worked. As a result, DEFENDANT
8 failed to compensate PLAINTIFFS and the CALIFORNIA CLASS Members wages for all
9 hours worked.

10 18. Under California law, every employer shall pay to each employee, on the
11 established payday for the period involved, not less than the applicable minimum wage for all
12 hours worked in the payroll period, whether the remuneration is measured by time, piece,
13 commission, or otherwise. Hours worked is defined in the applicable Wage Order as “the time
14 during which an employee is subject to the control of an employer, and includes all the time the
15 employee is suffered or permitted to work, whether or not required to do so. Here,
16 PLAINTIFFS and CALIFORNIA CLASS Members were entitled to separate hourly
17 compensation for time spent performing all non-sales related tasks directed by DEFENDANT
18 during their work shifts, including, but not limited to, weekly sales meetings, and are entitled to
19 one hour of pay for their rest periods.

20 19. From time to time, when DEFENDANT did not accurately record PLAINTIFFS’
21 and other CALIFORNIA CLASS Members’ missed meal and rest breaks and/or also failed to
22 pay the proper minimum wages, the wage statements issued to PLAINTIFFS and other
23 CALIFORNIA CLASS Members by DEFENDANT violated California law, and in particular,
24 Labor Code Section 226(a). Aside, from the violations listed above in this paragraph,
25 DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists all the
26 requirements under California Labor Code 226 *et seq.*

27 20. DEFENDANT as a matter of corporate policy, practice and procedure,
28 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFFS

1 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
2 PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of discharging
3 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
4 are required to indemnify employees for all expenses incurred in the course and scope of their
5 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
6 her employee for all necessary expenditures or losses incurred by the employee in direct
7 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
8 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
9 believed them to be unlawful."

10 21. In the course of their employment PLAINTIFFS and other CALIFORNIA
11 CLASS Members as a business expense, were required by DEFENDANT to use their own
12 personal cellular phones as a result of and in furtherance of their job duties as employees for
13 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
14 associated with the use of their personal cellular phones for DEFENDANT's benefit.
15 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
16 DEFENDANT to use their personal cell phones to for work related issues. As a result, in the
17 course of their employment with DEFENDANT the PLAINTIFFS and other members of the
18 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
19 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
20 benefit of DEFENDANT.

21 22. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
23 matter of company policy, practice and procedure, intentionally, knowingly and systematically
24 failed to compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS for
25 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to
26 purposefully avoid the payment for all time worked as required by California law which allows
27 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
28 with the law. 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. By reason of this uniform conduct applicable to PLAINTIFFS and all
4 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
5 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
6 (the “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
7 calculate and record all missed meal breaks and failed to pay PLAINTIFFS and CALIFORNIA
8 CLASS Members for rest periods as required by California law. The proper recording of these
9 employees’ missed meal and rest breaks is the DEFENDANT’s burden. As a result of
10 DEFENDANT’s intentional disregard of the obligation to meet this burden, DEFENDANT
11 failed to properly calculate and/or pay all required compensation for work performed by the
12 members of the CALIFORNIA CLASS and violated the California Labor Code and regulations
13 promulgated thereunder as herein alleged.

14 24. Specifically as to PLAINTIFFS, DEFENDANT failed to provide all the legally
15 required off-duty meal breaks to him and paid rest periods to him as required by the applicable
16 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFFS for his
17 missed meal and rest breaks. The nature of the work performed by PLAINTIFFS did not prevent
18 him from being relieved of all of his duties for the legally required off-duty meal periods.
19 Further, DEFENDANT failed to provide PLAINTIFFS with a second off-duty meal period each
20 workday in which PLAINTIFFS were required by DEFENDANT to work ten (10) hours of
21 work. As a result, DEFENDANT’S failure to provide PLAINTIFFS with the legally required
22 second off-duty meal period is evidenced by DEFENDANT’s business records. From time to
23 time, and as a result of DEFENDANT not accurately recording all missed meal and rest periods,
24 and failing to pay minimum wages due for all time worked, the wage statements issued to
25 PLAINTIFFS by DEFENDANT violated California law, and in particular, Labor Code Section
26 226(a). DEFENDANT also failed to pay PLAINTIFFS all earned bonuses that PLAINTIFFS
27 was entitled to during his employment with DEFENDANT. To date, DEFENDANT has yet to
28 pay PLAINTIFFS all of his wages due to him and all premiums due to him for missed meal and

1 rest breaks and DEFENDANT has failed to pay any penalty wages owed to him under
2 California Labor Code Section 203. The amount in controversy for PLAINTIFFS individually
3 does not exceed the sum or value of \$75,000.

4 **JURISDICTION AND VENUE**

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

9 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
10 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT and
11 DEFENDANT (i) currently maintain and at all relevant times maintained offices and facilities
12 in this County and/or conduct substantial business in this County, and (ii) committed the
13 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS
14 and CALIFORNIA LABOR SUB-CLASS.

15
16 **THE CALIFORNIA CLASS**

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

26 28. To the extent equitable tolling operates to toll claims by the CALIFORNIA
27 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
28 accordingly.

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

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

17 31. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
18 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
19 employee for all missed meal breaks, as required by California Labor Code.

20 32. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
21 CLASS Members is impracticable.

22 33. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
23 California law by:

- 24 a. Committing an act of unfair competition in violation of the California Unfair
25 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
26 provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with
27 all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the
28 legally required paid rest breaks,

1 b. Committing an act of unfair competition in violation of the California Unfair
2 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by unlawfully,
3 unfairly and deceptively having in place company policies, practices and
4 procedures that uniformly denied PLAINTIFFS and the members of the
5 CALIFORNIA CLASS the correct minimum wages and otherwise violated
6 applicable law; and,

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

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

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

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

20 c. The claims of the representative PLAINTIFFS are typical of the claims of each
21 member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other members
22 of the CALIFORNIA CLASS, was paid on a draw vs. commission compensation
23 scheme who was subjected to the DEFENDANT’s deceptive practice and policy
24 which failed to provide the legally required meal and rest periods to the
25 CALIFORNIA CLASS and thereby systematically underpaid compensation to
26 PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFFS sustained economic
27 injury as a result of DEFENDANT’s employment practices. PLAINTIFFS and
28 the members of the CALIFORNIA CLASS were and are similarly or identically

1 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
2 misconduct engaged in by DEFENDANT; and,

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

10 35. 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, statutory
13 and other legal questions within the class format, prosecution of separate actions
14 by individual members of the CALIFORNIA CLASS will create the risk of:

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

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

23 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
24 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
25 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
26 DEFENDANT uniformly failed to pay all wages due to members of the
27 CALIFONRIA CLASS as required by law;

28

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

- i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFFS seek declaratory relief holding that the DEFENDANT’S policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;
- c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
 - i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
 - ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or;
 - 2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the

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

adjudication or substantially impair or impede their ability to protect their interests;

- iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT’s employment practices were uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;

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

21 37. DEFENDANT maintains records from which the Court can ascertain and
22 identify by job title each of DEFENDANT'S employees who as have been systematically,
23 intentionally and uniformly subjected to DEFENDANT'S company policy, practices and
24 procedures as herein alleged. PLAINTIFFS will seek leave to amend the Complaint to include
25 any additional job titles of similarly situated employees when they have been identified.

26 //

27 //

28

THE CALIFORNIA LABOR SUB-CLASS

1
2 38. PLAINTIFFS further bring the Second, Third, Fourth Fifth, Sixth, and Seventh,
3 causes of Action on behalf of a California sub-class, defined as all members of the
4 CALIFORNIA CLASS who are or previously were employed by Defendant Larry Green
5 Chrysler Jeep Dodge, Inc. and/or Larry Green Ford Inc. and/or Larry Green Auto Center Blythe
6 Inc. in California and paid on a draw vs. commission compensation scheme in California (the
7 “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior to
8 the filing of the complaint and ending on the date as determined by the Court (the
9 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.
10 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 39. DEFENDANT, as a matter of company policy, practice and procedure, and in
13 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
14 requirements, and the applicable provisions of California law, intentionally, knowingly, and
15 willfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
16 compensation for the time worked by PLAINTIFFS and the other members of the
17 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this
18 work, required employees to perform this work and permitted or suffered to permit this work.
19 DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-CLASS Members
20 wages to which these employees are entitled in order to unfairly cheat the competition and
21 unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA
22 LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS
23 PERIOD should be adjusted accordingly.

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

1 complaint to include any additional job titles of similarly situated employees when they have
2 been identified.

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

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

- 7 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
8 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
9 missed meal and rest breaks in violation of the California Labor Code and
10 California regulations and the applicable California Wage Order;
- 11 b. Whether DEFENDANT failed to provide PLAINTIFFS and the other members
12 of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
13 statements;
- 14 c. Whether DEFENDANT has engaged in unfair competition by the above-listed
15 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 43. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
20 under California law by:

- 21 a. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the
22 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
23 statement in writing showing the corresponding correct amount of wages earned
24 by the employee, the total amount of hours worked, and the correct legal entity
25 that was their employer;
- 26 b. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
27 employee is discharged or quits from employment, the employer must pay the
28 employee all wages due without abatement, by failing to tender full payment

1 and/or restitution of wages owed or in the manner required by California law to
2 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
3 their employment,

- 4 c. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
5 accurately pay the PLAINTIFFS and the members of the CALIFORNIA LABOR
6 SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable
7 pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 8 d. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the
9 CALIFORNIA CLASS members with necessary expenses incurred in the
10 discharge of their job duties;
- 11 e. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS
12 and the other members of the CALIFORNIA CLASS with all legally required
13 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
14 paid rest breaks.

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

- 17 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
18 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
19 is impracticable and the disposition of their claims as a class will benefit the
20 parties and the Court;
- 21 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
22 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
23 CLASS and will apply uniformly to every member of the CALIFORNIA
24 LABOR SUB-CLASS;
- 25 c. The claims of the representative PLAINTIFFS are typical of the claims of each
26 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the
27 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
28 employee paid on an hourly basis who was subjected to the DEFENDANT'S

1 practice and policy which failed to pay the correct amount of wages due to the
2 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury
3 as a result of DEFENDANT’S employment practices. PLAINTIFFS and the
4 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
5 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
6 of misconduct engaged in by DEFENDANT; and

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

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

17 a. Without class certification and determination of declaratory, injunctive, statutory
18 and other legal questions within the class format, prosecution of separate actions
19 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
20 the risk of:

21 i. Inconsistent or varying adjudications with respect to individual members
22 of the CALIFORNIA LABOR SUB-CLASS which would establish
23 incompatible standards of conduct for the parties opposing the
24 CALIFORNIA LABOR SUB-CLASS; or

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

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

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

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

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

23 1. Inconsistent or varying adjudications with respect to individual
24 members of the CALIFORNIA LABOR SUB-CLASS, which
25 would establish incompatible standards of conduct for the
26 DEFENDANT; and/or,

27 2. Adjudications with respect to individual members of the
28 CALIFORNIA LABOR SUB-CLASS would as a practical matter

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

be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

- iii. In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

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

- d. PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’S actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were employed by DEFENDANT in California during the CALIFORNIA LABOR SUB-CLASS PERIOD; and
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

//
//
//
//

1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

8 48. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

21 50. By the conduct alleged herein, DEFENDANT has engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 204, 206.5, 210, 226.7, 512, 558, 1194, 1197, 1197.1, 1198 & 2802, for
25 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
26 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
27 unfair competition, including restitution of wages wrongfully withheld.

28 51. By the conduct alleged herein, DEFENDANT’S practices were unlawful and
unfair in that these practices violated public policy, were immoral, unethical, oppressive
unscrupulous or substantially injurious to employees, and were without valid justification or
utility for which this Court should issue equitable and injunctive relief pursuant to Section

1 17203 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

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

11 53. By the conduct alleged herein, DEFENDANT'S practices were also unlawful,
12 unfair and deceptive in that DEFENDANT'S employment practices caused PLAINTIFFS and
13 the other members of the CALIFORNIA CLASS to be underpaid during their employment with
14 DEFENDANT.

15 54. By the conduct alleged herein, DEFENDANT'S practices were also unfair and
16 deceptive in that DEFENDANT'S uniform policies, practices and procedures failed to provide
17 legally required meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS
18 members as required by Cal. Lab. Code §§ 226.7 and 512.

19 55. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
20 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
21 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
22 for each workday in which a second off-duty meal period was not timely provided for each ten
23 (10) hours of work.

24 56. PLAINTIFFS further demand on behalf of themselves and on behalf of each
25 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
26 was not timely provided as required by law.

27 57. By and through the unlawful and unfair business practices described herein,
28 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the

1 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
2 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
3 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
4 to unfairly compete against competitors who comply with the law.

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

10 59. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
11 to, and do, seek such relief as may be necessary to restore to them the money and property
12 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
13 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
14 unfair business practices, including earned but unpaid wages for all time worked.

15 60. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
16 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
17 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
18 engaging in any unlawful and unfair business practices in the future.

19 61. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no
20 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business
21 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur
22 unabated. As a result of the unlawful and unfair business practices described herein,
23 PLAINTIFFS and the other members of the CALIFORNIA CLASS have suffered and will
24 continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained from
25 continuing to engage in these unlawful and unfair business practices.

26 //

27 //

28

SECOND CAUSE OF ACTION

**FAILURE TO PROVIDE REQUIRED MEAL PERIODS
(Cal. Lab. Code §§ 226.7 & 512)**

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

62. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

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

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

1
2 **THIRD CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REQUIRED REST PERIODS**
4 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

10 67. In addition, because of DEFENDANT's compensation pay plan described herein,
11 DEFENDANT failed to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS
12 Members for their rest periods as required by the applicable Wage Order and Labor Code.
13 DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
14 PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS Members. As a result,
15 DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
16 Members with all the legally required paid rest periods is evidenced by DEFENDANT's
17 business records. Additionally, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS
18 Members were also required to work in excess of four (4) hours without being provided ten (10)
19 minute rest periods. Further, these employees were denied their first rest periods of at least ten
20 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest
21 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,
22 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten
23 (10) hours or more. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members
24 were also not provided with one hour wages in lieu thereof. As a result of their rigorous work
25 schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were
26 periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

27 68. DEFENDANT further violated California Labor Code §§ 226.7 and the
28 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA
LABOR SUB-CLASS Members who were not provided a rest period, in accordance with the

1 applicable Wage Order, one additional hour of compensation at each employee's regular rate of
2 pay for each workday that rest period was not provided.

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

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PAY MINIMUM WAGES**

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

9 **(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against all
Defendants)**

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

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

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

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

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

25 75. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
26 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
27 amount of time they worked, including time spent engaging in non sales related work tasks
28 while off the clock. As set forth herein, DEFENDANT's uniform policy and practice was to

1 unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the other
2 members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

17 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
18 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
19 than they were entitled to, constituting a failure to pay all earned wages.

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

26 81. DEFENDANT knew or should have known that PLAINTIFFS and the other
27 members of the CALIFORNIA LABOR SUB-CLASS are under-compensated for their time
28 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy,
2 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
3 pay PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS the
4 correct minimum wages for their time worked.

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

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

24 //

25 //

26 //

27 //

28 //

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

3 **(Cal. Lab. Code § 226)**

4 **(Alleged by PLAINTIFFS ELIAS BARBA-REYES, PEDRO MURGUIA, and EDGARDO MARTINEZ and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)**

5 84. PLAINTIFFS ELIAS BARBA-REYES, PEDRO MURGUIA, and EDGARDO
6 MARTINEZ, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and
7 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
8 Complaint.

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

- 11 a. Gross wages earned,
- 12 b. (2) total hours worked by the employee, except for any employee whose
13 compensation is solely based on a salary and who is exempt from payment
14 of overtime under subdivision (a) of Section 515 or any applicable order
15 of the Industrial Welfare Commission,
- 16 c. the number of piecerate units earned and any applicable piece rate if the
17 employee is paid on a piece-rate basis,
- 18 d. all deductions, provided that all deductions made on written orders of the
19 employee may be aggregated and shown as one item,
- 20 e. net wages earned,
- 21 f. the inclusive dates of the period for which the employee is paid,
- 22 g. 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 of
24 an employee identification number other than social security number may be
25 shown on the itemized statement,
- 26 h. the name and address of the legal entity that is the employer, and
- 27 i. all applicable hourly rates in effect during the pay period and the corresponding
28 number of hours worked at each hourly rate by the employee.

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

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

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

24 91. PLAINTIFFS therefore demand reimbursement for expenditures or losses
25 incurred by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their
26 job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
27 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

28

1 **SEVENTH CAUSE OF ACTION**

2 **FOR FAILURE TO TIMELY PAY WAGES WHEN DUE**

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

4 **(Alleged By PLAINTIFFS BRIAN REYES, JESUS ROCHA, JONATHAN ZARATE-
ARANA, and STEVEN SALAZAR and the CALIFORNIA LABOR SUB-CLASS against all
5 Defendants)**

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

9 93. Cal. Lab. Code § 200 provides, in relevant part, that:

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

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

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

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

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

7 102. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, bring this Representative Action on behalf of the State of California with respect to
10 themselves and all individuals who are or previously were employed by DEFENDANT and
11 classified as non-exempt employees in California during the time period of August 16, 2018
12 until the present (the "AGGRIEVED EMPLOYEES").

13 103. On August 16, 2019, PLAINTIFF gave written notice by certified mail to the
14 Labor and Workforce Development Agency (the "Agency") and the employer of the
15 specific provisions of this code alleged to have been violated as required by Labor Code §
16 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
17 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
18 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
19 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
20 to all AGGRIEVED EMPLOYEES as herein defined.

21 104. The policies, acts and practices heretofore described were and are an unlawful
22 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
23 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
24 minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal
25 and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
26 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
27 including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 512, 558,
28 1194, 1197, 1197.1, 2802, and the applicable Industrial Wage Order(s), and thereby gives rise to

1 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
2 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
3 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
4 the other AGGRIEVED EMPLOYEES.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFFS pray for a judgment against each Defendants, jointly and
8 severally, as follows:

9 1. On behalf of the CALIFORNIA CLASS:

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

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

- 21 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
22 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
23 pursuant to Cal. Code of Civ. Proc. § 382;
- 24 b. Compensatory damages, according to proof at trial, including compensatory
25 damages for minimum wage compensation due to PLAINTIFFS and the other
26 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
27 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
28 statutory rate;

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

- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226; and
 - e. The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit;
 - f. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and
 - g. The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

//
//
//
//
//
//
//
//
//
//

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

4. On all claims:

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

DATED: November 6, 2019

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFFS

DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

DATED: November 6, 2019

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFFS

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

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:
Nick@bamlawca.com

WRITERS EXT:
1004

August 16, 2019
CA1930

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency Stowasser Buick-GMC, Inc.

Online Filing

Certified Mail # 70181830000123837420

Robert R. Stowasser, Jr.

600 E. Betteravia Road

Santa Maria, CA 93454

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 210, 226(a), 226.7, 512, 558, 1194, 1197, 1197.1, 2802, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Stowasser Buick-GMC, Inc. California during the time period of August 16, 2018 until a date as determined by the Court. Our offices represent Brian Reyes (“Plaintiff”), and other aggrieved employees in a lawsuit against Defendant Stowasser Buick-GMC, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from February of 2018 to April of 2019 and was at all times during his employment entitled to be paid minimum wages and entitled to the legally required meal and rest periods. Defendant failed to pay Plaintiff and other aggrieved employees all minimum wages due to them. Defendant also failed to reimburse Plaintiff and other aggrieved employees for their business expenses that were necessary to complete their job duties for Defendant, including using their personal cell phones to conduct business for Defendant. 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). The Defendant’s work schedule additionally required Plaintiff and other aggrieved employees to work without being provided the legally required meal and rest periods and Defendant failed to provide payment for meal and rest break violations. Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Finally, Defendant failed to advise Plaintiff and the other aggrieved employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods when working on a commission and/or commission draw basis and failed to separately compensate Plaintiff and the other aggrieved employees for the non-productive time associated with their rest periods. *See Vaquero v.*

Stoneledge Furniture, LLC, 9 Cal. App. 5th 98, 110 (2017). Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 210, 226(a) 226.7, 512, 558, 1194, 1197, 1197.1, 2802, Violation of 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 Complaint, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) 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 Plaintiff, the Defendant and the attached 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 of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

3 2255 Calle Clara

La Jolla, CA 92037

4 Telephone: (858)551-1223

Facsimile: (858) 551-1232

5 Website: www.bamlawca.com

6 Attorneys for Plaintiff

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SANTA BARBARA**

10
11 BRIAN REYES, an individual, on behalf of
himself, and on behalf of all persons similarly
12 situated,

13 Plaintiff,

14 vs.

15 STOWASSER BUICK-GMC, INC.; and
Does 1 through 50, Inclusive,

16 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

- 1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
- 2. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 3. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 4. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 5. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and,
- 7. FAILURE TO TIMELY PAY WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203.

DEMAND FOR A JURY TRIAL

1 Plaintiff Brian Reyes (“PLAINTIFF”), an individual, on behalf of himself and all other
2 similarly situated current and former employees, alleges on information and belief, except for
3 his own acts and knowledge which are based on personal knowledge, the following:
4

5 **THE PARTIES**

6 1. Defendant Stowasser Buick-GMC, Inc.(“DEFENDANT”) is a California
7 Corporation and at all relevant times mentioned herein conducted and continues to conduct
8 substantial and regular business throughout the State of California.

9 2. DEFENDANT retails automobile vehicles. The Company offers new and used
10 cars as well as financing, maintenance, and repair services.

11 3. PLAINTIFF was employed by DEFENDANT in California from February of
12 2018 to April of 2019 and was at all times during his employment with DEFENDANT entitled
13 to be paid minimum wages and entitled to the legally required off-duty meal periods.
14 PLAINTIFF was also required to be paid for his rest periods as DEFENDANT paid
15 PLAINTIFF only commissions wages for certain pay periods. DEFENDANT did not separately
16 compensate PLAINTIFF for his rest periods.

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

24 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
26 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
27 which failed to lawfully compensate these employees for all their missed meal breaks and
28 unpaid rest periods. DEFENDANT’s uniform policy and practice alleged herein is an unlawful,

1 performed by PLAINTIFF and CALIFORNIA CLASS MEMBERS did not prevent these
2 employees from being relieved of all of their duties for the legally required off-duty meal
3 periods. DEFENDANT’S meal period policies and practices were unlawful because
4 PLAINTIFF and other CALIFORNIA CLASS Members were far too over-booked and
5 overworked to take a timely off-duty thirty (30) minute meal period. As a result of their
6 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often
7 not fully relieved of duty by DEFENDANT for their meal periods. Additionally,
8 DEFENDANT’s failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
9 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
10 DEFENDANT’s business records. As a result, PLAINTIFF and other members of the
11 CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and
12 in accordance with DEFENDANT’s strict corporate policy and practice.

13 9. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
14 Members with a second off-duty meal period on workdays in which these employees were
15 required by DEFENDANT to work ten (10) hours of work from time to time. As a result,
16 DEFENDANT’S failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
17 legally required meal breaks is evidenced by DEFENDANT’s business records which contain
18 no record of these breaks.

19 10. In addition, because of DEFENDANT’s commission pay plan described herein,
20 DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA CLASS Members for their
21 rest periods as required by the applicable Wage Order and Labor Code. DEFENDANT did not
22 have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other
23 CALIFORNIA CLASS Members. As a result, DEFENDANT’s failure to provide PLAINTIFF
24 and the CALIFORNIA CLASS Members with all the legally required paid rest periods is
25 evidenced by DEFENDANT’s business records.

26 11. Under California law, every employer shall pay to each employee, on the
27 established payday for the period involved, not less than the applicable minimum wage for all
28 hours worked in the payroll period, whether the remuneration is measured by time, piece,

1 commission, or otherwise. Hours worked is defined in the applicable Wage Order as “the time
2 during which an employee is subject to the control of an employer, and includes all the time the
3 employee is suffered or permitted to work, whether or not required to do so. Here, PLAINTIFF
4 and CALIFORNIA CLASS Members were entitled to separate hourly compensation for time
5 spent performing all non-sales related tasks directed by DEFENDANT during their work shifts,
6 including, but not limited to, weekly sales meetings, and are entitled to one hour of pay for their
7 rest periods.

8 12. From time to time, when DEFENDANT did not accurately record PLAINTIFF’s
9 and other CALIFORNIA CLASS Members’ missed meal and rest breaks and/or also failed to
10 pay the proper minimum wages, the wage statements issued to PLAINTIFF and other
11 CALIFORNIA CLASS Members by DEFENDANT violated California law, and in particular,
12 Labor Code Section 226(a). Aside, from the violations listed above in this paragraph,
13 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
14 requirements under California Labor Code 226 *et seq.*

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

26 14. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
27 Members as a business expense, were required by DEFENDANT to use their own personal
28 cellular phones as a result of and in furtherance of their job duties as employees for

1 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
2 associated with the use of their personal cellular phones for DEFENDANT's benefit.
3 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
4 DEFENDANT to use their personal cell phones to for work related issues. As a result, in the
5 course of their employment with DEFENDANT the PLAINTIFF and other members of the
6 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
7 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
8 benefit of DEFENDANT.

9 15. In violation of the applicable sections of the California Labor Code and the
10 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
11 a matter of company policy, practice and procedure, intentionally, knowingly and systematically
12 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
13 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended
14 to purposefully avoid the payment for all time worked as required by California law which
15 allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who
16 complied with the law. To the extent equitable tolling operates to toll claims by the
17 CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be
18 adjusted accordingly.

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

1 promulgated thereunder as herein alleged.

2 17. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
3 required off-duty meal breaks to him and paid rest periods to him as required by the applicable
4 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for his missed
5 meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent him
6 from being relieved of all of his duties for the legally required off-duty meal periods. Further,
7 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday
8 in which PLAINTIFF was required by DEFENDANT to work ten (10) hours of work. As a
9 result, DEFENDANT'S failure to provide PLAINTIFF with the legally required second off-duty
10 meal period is evidenced by DEFENDANT's business records. From time to time, and as a
11 result of DEFENDANT not accurately recording all missed meal and rest periods, and failing
12 to pay minimum wages due for all time worked, the wage statements issued to PLAINTIFF by
13 DEFENDANT violated California law, and in particular, Labor Code Section 226(a).
14 DEFENDANT also failed to pay PLAINTIFF all earned bonuses that PLAINTIFF was entitled
15 to during his employment with DEFENDANT. To date, DEFENDANT has yet to pay
16 PLAINTIFF all of his wages due to him and all premiums due to him for missed meal and rest
17 breaks and DEFENDANT has failed to pay any penalty wages owed to him under California
18 Labor Code Section 203. The amount in controversy for PLAINTIFF individually does not
19 exceed the sum or value of \$75,000.

20
21 **JURISDICTION AND VENUE**

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

26 19. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
28 maintained offices and facilities in this County and/or conducts substantial business in this

1 County, and (ii) committed the wrongful conduct herein alleged in this County against members
2 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

3
4 **THE CALIFORNIA CLASS**

5 20. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
6 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
7 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
8 all individuals who are or previously were employed by DEFENDANT in California and paid
9 on a draw vs. commission compensation scheme (the "CALIFORNIA CLASS") at any time
10 during the period beginning on the date four (4) years prior to the filing of this Complaint and
11 ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The
12 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
13 million dollars (\$5,000,000.00).

14 21. To the extent equitable tolling operates to toll claims by the CALIFORNIA
15 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
16 accordingly.

17 22. DEFENDANT, as a matter of company policy, practice and procedure, and in
18 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
19 requirements, and the applicable provisions of California law, intentionally, knowingly, and
20 wilfully, engaged in a practice whereby DEFENDANT systematically failed to correctly record
21 missed meal and rest breaks and all time worked by PLAINTIFF and the other members of the
22 CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required
23 employees to perform this work and permitted or suffered to permit this work.

24 23. DEFENDANT has the legal burden to establish that each and every
25 CALIFORNIA CLASS Member was paid the correct wages for all time worked. The
26 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to
27 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy
28 or practice to ensure that each and every CALIFORNIA CLASS Member is paid for all missed

1 meal and rest breaks, so as to satisfy their burden. This common business practice applicable
2 to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
3 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
4 (the “UCL”) as causation, damages, and reliance are not elements of this claim.

5 24. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
6 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
7 employee for all missed meal breaks, as required by California Labor Code.

8 25. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
9 CLASS Members is impracticable.

10 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
11 California law by:

- 12 (a) Committing an act of unfair competition in violation of the California
13 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
14 failing to provide PLAINTIFF and the other members of the
15 CALIFORNIA CLASS with all legally required off-duty, uninterrupted
16 thirty (30) minute meal breaks and the legally required paid rest breaks;
- 17 (b) Committing an act of unfair competition in violation of the California
18 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
19 unlawfully, unfairly and deceptively having in place company policies,
20 practices and procedures that uniformly denied PLAINTIFF and the
21 members of the CALIFORNIA CLASS the correct minimum wages and
22 otherwise violated applicable law; and,
- 23 (c) Committing an act of unfair competition in violation of the California
24 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
25 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
26 the CALIFORNIA CLASS members with necessary expenses incurred in
27 the discharge of their job duties.

28 27. This Class Action meets the statutory prerequisites for the maintenance of a Class

1 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 2 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
3 that the joinder of all such persons is impracticable and the disposition of
4 their claims as a class will benefit the parties and the Court;
- 5 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
6 that are raised in this Complaint are common to the CALIFORNIA
7 CLASS will apply uniformly to every member of the CALIFORNIA
8 CLASS;
- 9 (c) The claims of the representative PLAINTIFF are typical of the claims of
10 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
11 other members of the CALIFORNIA CLASS, was paid on a draw vs.
12 commission compensation scheme who was subjected to the
13 DEFENDANT's deceptive practice and policy which failed to provide the
14 legally required meal and rest periods to the CALIFORNIA CLASS and
15 thereby systematically underpaid compensation to PLAINTIFF and
16 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
17 result of DEFENDANT's employment practices. PLAINTIFF and the
18 members of the CALIFORNIA CLASS were and are similarly or
19 identically harmed by the same unlawful, deceptive, unfair and pervasive
20 pattern of misconduct engaged in by DEFENDANT; and,
- 21 (d) The representative PLAINTIFF will fairly and adequately represent and
22 protect the interest of the CALIFORNIA CLASS, and has retained
23 counsel who are competent and experienced in Class Action litigation.
24 There are no material conflicts between the claims of the representative
25 PLAINTIFF and the members of the CALIFORNIA CLASS that would
26 make class certification inappropriate. Counsel for the CALIFORNIA
27 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
28 Members.

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

3 (a) Without class certification and determination of declaratory, injunctive,
4 statutory and other legal questions within the class format, prosecution of
5 separate actions by individual members of the CALIFORNIA CLASS will
6 create the risk of:

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

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

16 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
17 act on grounds generally applicable to the CALIFORNIA CLASS, making
18 appropriate class-wide relief with respect to the CALIFORNIA CLASS
19 as a whole in that DEFENDANT uniformly failed to pay all wages due to
20 members of the CALIFORNIA CLASS as required by law;

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

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

7 1) The interests of the members of the CALIFORNIA CLASS in
8 individually controlling the prosecution or defense of separate
9 actions in that the substantial expense of individual actions will be
10 avoided to recover the relatively small amount of economic losses
11 sustained by the individual CALIFORNIA CLASS Members when
12 compared to the substantial expense and burden of individual
13 prosecution of this litigation;

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

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

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

25 3) In the context of wage litigation because a substantial number of
26 individual CALIFORNIA CLASS Members will avoid asserting
27 their legal rights out of fear of retaliation by DEFENDANT, which
28 may adversely affect an individual's job with DEFENDANT or

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

with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

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

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

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT’s employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and

1 other improprieties, and in obtaining adequate compensation for the
2 damages and injuries which DEFENDANT's actions have inflicted upon
3 the CALIFORNIA CLASS;

4 (f) There is a community of interest in ensuring that the combined assets of
5 DEFENDANT are sufficient to adequately compensate the members of
6 the CALIFORNIA CLASS for the injuries sustained;

7 (g) DEFENDANT has acted or refused to act on grounds generally applicable
8 to the CALIFORNIA CLASS, thereby making final class-wide relief
9 appropriate with respect to the CALIFORNIA CLASS as a whole;

10 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
11 the business records of DEFENDANT; and,

12 (i) Class treatment provides manageable judicial treatment calculated to bring
13 a efficient and rapid conclusion to all litigation of all wage and hour
14 related claims arising out of the conduct of DEFENDANT as to the
15 members of the CALIFORNIA CLASS.

16 30. DEFENDANT maintains records from which the Court can ascertain and identify
17 by job title each of DEFENDANT's employees who as have been systematically, intentionally
18 and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein
19 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
20 of similarly situated employees when they have been identified.

21
22 **THE CALIFORNIA LABOR SUB-CLASS**

23 31. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth and Seventh
24 Causes of Action on behalf of a California sub-class, defined as all members of the
25 CALIFORNIA CLASS who are or previously were employed by Defendant Larry Green
26 Chrysler Jeep Dodge, Inc. and/or Larry Green Ford Inc. and/or Larry Green Auto Center Blythe
27 Inc. in California and paid on a draw vs. commission compensation scheme in California (the
28

1 “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years prior to
2 the filing of the complaint and ending on the date as determined by the Court (the
3 “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.
4 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
5 Members is under five million dollars (\$5,000,000.00).

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

18 33. DEFENDANT maintains records from which the Court can ascertain and identify
19 by name and job title, each of DEFENDANT’s employees who have been systematically,
20 intentionally and uniformly subjected to DEFENDANT’s company policy, practices and
21 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include
22 any additional job titles of similarly situated employees when they have been identified.

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

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

- 27 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
28 compensation due to members of the CALIFORNIA LABOR SUB-

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

CLASS for missed meal and rest breaks in violation of the California Labor Code and California regulations and the applicable California Wage Order;

- (b) Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- (c) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- (d) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- (e) Whether DEFENDANT’s conduct was willful.

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

- (a) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee, the total amount of hours worked, and the correct legal entity that was their employer; and,
- (b) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment;
- (c) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

- 1 (d) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
2 the CALIFORNIA CLASS members with necessary expenses incurred in
3 the discharge of their job duties;
- 4 (e) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
5 PLAINTIFF and the other members of the CALIFORNIA CLASS with
6 all legally required off-duty, uninterrupted thirty (30) minute meal breaks
7 and the legally required paid rest breaks.

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

- 10 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
11 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
12 Members is impracticable and the disposition of their claims as a class
13 will benefit the parties and the Court;
- 14 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
15 that are raised in this Complaint are common to the CALIFORNIA
16 LABOR SUB-CLASS and will apply uniformly to every member of the
17 CALIFORNIA LABOR SUB-CLASS;
- 18 (c) The claims of the representative PLAINTIFF are typical of the claims of
19 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
20 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
21 was paid on a draw vs. commission compensation scheme who was
22 subjected to the DEFENDANT's practice and policy which failed to pay
23 the correct amount of wages due to the CALIFORNIA LABOR SUB-
24 CLASS for all time worked. PLAINTIFF sustained economic injury as
25 a result of DEFENDANT's employment practices. PLAINTIFF and the
26 members of the CALIFORNIA LABOR SUB-CLASS were and are
27 similarly or identically harmed by the same unlawful, deceptive, unfair
28 and pervasive pattern of misconduct engaged in by DEFENDANT; and,

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

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

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

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

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

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

1 wages for all time worked by the members of the CALIFORNIA LABOR
2 SUB-CLASS as required by law;

3 (c) Common questions of law and fact predominate as to the members of the
4 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
5 violations of California Law as listed above, and predominate over any
6 question affecting only individual CALIFORNIA LABOR SUB-CLASS
7 Members, and a Class Action is superior to other available methods for
8 the fair and efficient adjudication of the controversy, including
9 consideration of:

10 1) The interests of the members of the CALIFORNIA LABOR SUB-
11 CLASS in individually controlling the prosecution or defense of
12 separate actions in that the substantial expense of individual
13 actions will be avoided to recover the relatively small amount of
14 economic losses sustained by the individual CALIFORNIA
15 LABOR SUB-CLASS Members when compared to the substantial
16 expense and burden of individual prosecution of this litigation;

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

19 A. Inconsistent or varying adjudications with respect to
20 individual members of the CALIFORNIA LABOR SUB-
21 CLASS, which would establish incompatible standards of
22 conduct for the DEFENDANT; and/or,

23 B. Adjudications with respect to individual members of the
24 CALIFORNIA LABOR SUB-CLASS would as a practical
25 matter be dispositive of the interests of the other members
26 not parties to the adjudication or substantially impair or
27 impede their ability to protect their interests;

28 3) In the context of wage litigation because a substantial number of

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

individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

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

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

- (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

- 1 (e) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the acts of unfair competition, statutory violations and
3 other improprieties, and in obtaining adequate compensation for the
4 damages and injuries which DEFENDANT's actions have inflicted upon
5 the 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
8 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally applicable
10 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
11 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
12 CLASS as a whole;
- 13 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
14 ascertainable from the business records of DEFENDANT. The
15 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
16 CLASS Members who worked for DEFENDANT in California at any
17 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 18 (i) Class treatment provides manageable judicial treatment calculated to bring
19 a efficient and rapid conclusion to all litigation of all wage and hour
20 related claims arising out of the conduct of DEFENDANT as to the
21 members of the CALIFORNIA LABOR SUB-CLASS.

22
23 **FIRST CAUSE OF ACTION**

24 **For Unlawful Business Practices**

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

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

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

1 Complaint.

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

4 42. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
5 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
6 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
7 competition as follows:

8 Any person who engages, has engaged, or proposes to engage in unfair
9 competition may be enjoined in any court of competent jurisdiction. The court
10 may make such orders or judgments, including the appointment of a receiver, as
11 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.

12 Cal. Bus. & Prof. Code § 17203.

13 43. By the conduct alleged herein, DEFENDANT has engaged and continues to
14 engage in a business practice which violates California law, including but not limited to, the
15 applicable Industrial Wage Order(s), the California Code of Regulations and the California
16 Labor Code including Sections 204, 206.5, 210, 226.7, 512, 558, 1194, 1197, 1197.1, 1198 &
17 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
18 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
19 constitute unfair competition, including restitution of wages wrongfully withheld.

20 44. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
21 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
22 unscrupulous or substantially injurious to employees, and were without valid justification or
23 utility for which this Court should issue equitable and injunctive relief pursuant to Section
24 17203 of the California Business & Professions Code, including restitution of wages wrongfully
25 withheld.

26 45. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
27 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
28 mandated meal and rest periods and the required amount of compensation for missed meal and

1 rest periods and minimum wages due to a systematic business practice that cannot be justified,
2 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
3 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
4 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
5 wrongfully withheld.

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

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

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

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

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

28 51. All the acts described herein as violations of, among other things, the Industrial

1 Welfare Commission Wage Orders, the California Code of Regulations, and the California
2 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
3 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
4 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

21
22 **SECOND CAUSE OF ACTION**

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

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

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

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

1 of this Complaint.

2 56. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
3 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
4 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature
5 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS
6 did not prevent these employees from being relieved of all of their duties for the legally required
7 off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
8 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
9 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
10 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
11 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
12 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
13 therefore forfeited meal breaks without additional compensation and in accordance with
14 DEFENDANT's strict corporate policy and practice.

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

20 58. As a proximate result of the aforementioned violations, PLAINTIFF and
21 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
23 suit.

24 ///
25 ///
26 ///
27 ///
28 ///

1 **THIRD CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

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

9 60. In addition, because of DEFENDANT's compensation pay plan described
10 herein, DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA LABOR SUB-
11 CLASS Members for their rest periods as required by the applicable Wage Order and Labor
12 Code. DEFENDANT did not have a policy or practice which paid for off-duty rest periods
13 to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members. As a result,
14 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-
15 CLASS Members with all the legally required paid rest periods is evidenced by
16 DEFENDANT's business records. Additionally, PLAINTIFF and other CALIFORNIA
17 LABOR SUB-CLASS Members were also required to work in excess of four (4) hours
18 without being provided ten (10) minute rest periods. Further, these employees were denied
19 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
20 to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts
21 worked of between six (6) and eight (8) hours, and a first, second and third rest period of at
22 least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and
23 other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour
24 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
25 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
26 periods by DEFENDANT and DEFENDANT's managers.

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

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

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

8
9 **FOURTH CAUSE OF ACTION**

10 **For Failure To Pay Minimum Wages**

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

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

13 **and Against All Defendants)**

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

17 64. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
18 bring a claim for DEFENDANT’s willful and intentional violations of the California Labor
19 Code and the Industrial Welfare Commission requirements for DEFENDANT’s failure to
20 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
21 Members.

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

24 66. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
25 commission is the minimum wage to be paid to employees, and the payment of a less wage than
26 the minimum so fixed in unlawful.

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

1 68. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
2 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
3 amount of time they worked, including time spent engaging in non sales related work tasks
4 while off the clock. As set forth herein, DEFENDANT's uniform policy and practice was to
5 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

24 73. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
25 compensation to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS for the true time they worked, PLAINTIFF and the other members of the
27 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
28 injury in amounts which are presently unknown to them and which will be ascertained

1 according to proof at trial.

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

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

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

28

1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

6 77. 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
8 of this Complaint.

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

11 (1) gross wages earned,

12 (2) total hours worked by the employee, except for any employee whose compensation
13 is solely based on a salary and who is exempt from payment of overtime under
14 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
15 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 employee
19 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
24 employee identification number other than a social security number may be shown on
25 the itemized statement,

26 (8) the name and address of the legal entity that is the employer, and

27 (9) all applicable hourly rates in effect during the pay period and the corresponding
28 number of hours worked at each hourly rate by the employee.

1 paragraphs of this Complaint.

2 82. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

25 84. PLAINTIFF therefore demands reimbursement for expenditures or losses
26 incurred by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of
27 their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
28 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

1 **SEVENTH CAUSE OF ACTION**

2 **For Failure to Timely Pay Wages When Due**

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

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

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

9 86. Cal. Lab. Code § 200 provides, in relevant part, that:

10 As used in this article:

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

13 (b) "Labor" includes labor, work, or service 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 87. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer
discharges an employee, the wages earned and unpaid at the time of discharge are due and
16 payable immediately."

17 88. Cal. Lab. Code § 202 provides, in relevant part, that:

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

23 89. There was no definite term in PLAINTIFF'S or any CALIFORNIA LABOR
24 SUB-CLASS Members' employment contract.

25 90. Cal. Lab. Code § 203 provides, in relevant part, that:

26 If an employer willfully fails to pay, without abatement or reduction, in
27 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
28 continue as a penalty from the due date thereof at the same rate until paid

1 or until an action therefor is commenced; but the wages shall not continue
2 for more than 30 days.

3 91. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
4 CLASS Members terminated and DEFENDANT has not tendered payment of all wages
5 owed as required by law.

6 92. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
7 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated
8 and who have missed meal and rest breaks without being paid the legally required penalties
9 by DEFENDANT, PLAINTIFF demands up to thirty days of pay as penalty for not timely
10 paying all wages due at time of termination for all employees who terminated employment
11 during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and statutory costs
12 as allowed by law.

13 **PRAYER FOR RELIEF**

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

16 1. On behalf of the CALIFORNIA CLASS:

- 17 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
18 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 19 B) An order temporarily, preliminarily and permanently enjoining and restraining
20 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 21 C) An order requiring DEFENDANT to pay all sums unlawfully withheld from
22 compensation due to PLAINTIFF and the other members of the
23 CALIFORNIA CLASS; and,
- 24 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid
25 fund for restitution of the sums incidental to DEFENDANT's violations due to
26 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

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

- 28 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh

1 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a
2 class action pursuant to Cal. Code of Civ. Proc. § 382;

3 B) Meal and rest period compensation pursuant to California Labor Code Section
4 226.7 and the applicable IWC Wage Order;

5 C) Compensatory damages, according to proof at trial, including compensatory
6 damages for minimum wage compensation due PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
8 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
9 statutory rate

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

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

18 F) Liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
19 and,

20 G) The wages of all terminated employees in the CALIFORNIA LABOR
21 SUB-CLASS as a penalty from the due date thereof at the same rate until paid
22 or until an action therefore is commenced, in accordance with Cal. Lab. Code
23 § 203.

24 4. On all claims:

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

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

27 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
28 law, including, but not limited to, pursuant to Labor Code §226, §1194, 1197,

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

and/or §2802.

Dated: August 16, 2019 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

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

DEMAND FOR A JURY TRIAL

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

Dated: August 16, 2019 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff