

**SUMMONS
(CITACION JUDICIAL)**

ELECTRONICALLY FILED

9/27/2022

**Kern County Superior Court
By Alejandra Velazquez, Deputy**

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

TASTEFUL SELECTIONS, LLC., a Wisconsin limited liability company; ESPARZA ENTERPRISES, INC., a California corporation; and DOES 1-50, Inclusive,

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

LUIS GOMEZ, an individual, on behalf of himself and on behalf of all persons similarly situated,

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es):
Kern Superior Court - Metro Division
1215 Truxtun Avenue
Bakersfield, CA 93301

CASE NUMBER:
(Número del Caso): **BCV-22-102494**

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

DATE: 9/27/2022 TAMARAH HARBER-PICKENS Clerk, by _____, Deputy
(Fecha) (Secretario)

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



NOTICE TO THE PERSON SERVED: You are served

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

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Attorneys for Plaintiff LUIS GOMEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

LUIS GOMEZ, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

TASTEFUL SELECTIONS, LLC., a
Wisconsin limited liability company;
ESPARZA ENTERPRISES, INC., a California
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: **BCV-22-102494**

CLASS ACTION COMPLAINT FOR:

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

- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802.
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.]

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant TASTEFUL SELECTIONS, LLC (“Defendant Tasteful Selections”) is a Wisconsin limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. Defendant ESPARZA ENTERPRISES, INC. (“Defendant Esparza Enterprises”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

3. Defendant Tasteful Selections and Defendant Esparza Enterprises were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

4. Defendant Esparza Enterprises owns and operates staffing agencies throughout the United States and staffs many companies in California, including Defendant Tasteful Selections in Kern County where PLAINTIFF worked.

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

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

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

25 8. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
26 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
27 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
28

1 employee a wage less than the minimum fixed by California state law, and as such, are subject to
2 civil penalties for each underpaid employee

3 9. PLAINTIFF has been employed by DEFENDANTS in California since August of
4 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
5 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
6 and overtime wages due for all time worked.

7 10. PLAINTIFF brings this Class Action on behalf of himself and a California class,
8 defined as all persons who are or previously were employed by Defendant Tasteful Selections
9 and/or Defendant Esparza Enterprises who performed work for Defendant Tasteful Selections in
10 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
11 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
12 date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
13 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
14 (\$5,000,000.00).

15 11. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
16 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
17 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
18 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
19 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
20 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
21 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
22 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
23 other members of the CALIFORNIA CLASS who have been economically injured by
24 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
25 relief.

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

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

6 **JURISDICTION AND VENUE**

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

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

16 **THE CONDUCT**

17 16. In violation of the applicable sections of the California Labor Code and the
18 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
19 matter of company policy, practice and procedure, intentionally, knowingly and systematically
20 failed to provide legally compliant meal and rest periods, failed to accurately compensate
21 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
22 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
23 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to compensate
24 PLAINTIFF and other members of the CALIFORNIA CLASS meal rest premiums at the regular
25 rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business
26 expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with
27 accurate itemized wage statements showing, among other things, all applicable hourly rates in
28 effect during the pay periods and the corresponding amount of time worked at each hourly rate.

1 DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate
2 and full payment for all time worked as required by California law which allows DEFENDANTS
3 to illegally profit and gain an unfair advantage over competitors who comply with the law. To
4 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
5 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

6 **A. Meal Period Violations**

7 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
8 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
9 meaning the time during which an employee is subject to the control of an employer, including
10 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
11 PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work
12 without paying them for all the time they were under DEFENDANTS' control. Specifically, as a
13 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
14 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
15 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work
16 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.
17 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. More
18 specifically, from time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
19 required by DEFENDANTS to work through their meal breaks in order to meet DEFENDANTS'
20 prescribed labor hours to perform all the tasks required of them by DEFENDANTS. PLAINTIFF
21 and other CALIFORNIA CLASS Members were required to perform work-related tasks.
22 Additionally, PLAINTIFF and other CALIFORNIA CLASS Members were required to perform
23 as much work as possible and as quickly as possible in order to meet DEFENDANTS' strict
24 performance and production requirements. As a result, the PLAINTIFF and other CALIFORNIA
25 CLASS Members forfeited minimum wage and overtime wages by regularly working without
26 their time being accurately recorded and without compensation at the applicable minimum wage
27 and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and
28

1 other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS’
2 business records.

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

19 **B. Rest Period Violations**

20 19. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
21 CALIFORNIA CLASS members were also required from time to time to work in excess of four
22 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
23 requirements and DEFENDANTS’ inadequate staffing. More specifically, from time to time,
24 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to
25 work through their rest breaks in order to meet DEFENDANTS’ prescribed labor hours to perform
26 all the tasks required of them by DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS
27 Members were required to perform work-related tasks. Additionally, PLAINTIFF and other
28 CALIFORNIA CLASS Members were required to perform as much work as possible and as

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

13 **C. Unlawful Rounding Violations**

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

26 21. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
27 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
28 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding

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

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

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

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

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

28

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

19 26. In violation of the applicable sections of the California Labor Code and the
20 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
21 matter of company policy, practice and procedure, intentionally and knowingly failed to
22 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
23 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
24 This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the
25 payment of the correct overtime and double time compensation, meal and rest period premiums,
26 and sick pay as required by California law which allowed DEFENDANTS to illegally profit and
27 gain an unfair advantage over competitors who complied with the law. To the extent equitable
28

1 tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANTS,
2 the CLASS PERIOD should be adjusted accordingly.

3 **E. Unreimbursed Business Expenses**

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

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

26 **F. Wage Statement Violations**

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

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

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

15 31. In addition to the violations described above, DEFENDANTS, from time to time,
16 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
17 that comply with Cal. Lab. Code § 226.

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

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

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

1 after the beginning of his shift, spending time under the DEFENDANTS' control for which he was
2 not compensated. More specifically, from time to time, PLAINTIFF and other CALIFORNIA
3 CLASS Members were required by DEFENDANTS to perform work before and after the beginning
4 of their shifts in order to meet DEFENDANTS' prescribed labor hours to perform all the tasks
5 required of them by DEFENDANTS. Additionally, since DEFENDANTS required PLAINTIFF
6 and other CALIFORNIA CLASS Members to perform as much work as possible and as quickly as
7 possible in order to meet DEFENDANTS' strict performance and production requirements,
8 PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to work
9 off-the-clock before and after their shifts, and during off-duty meal breaks, in order to meet
10 DEFENDANTS' strict requirements.

11 34. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
12 minimum wage and overtime compensation by regularly working without their time being
13 accurately recorded and without compensation at the applicable minimum wage and overtime rates.
14 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS
15 necessary wages for attending for performing work at DEFENDANTS' direction, request and
16 benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF
17 and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS'
18 business records.

19 35. DEFENDANTS directed and directly benefited from the uncompensated off-the-
20 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

21 36. DEFENDANTS controlled the work schedules, duties, protocols, applications,
22 assignments, and employment conditions of PLAINTIFF and the other members of the
23 CALIFORNIA CLASS.

24 37. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
25 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
26 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
27 wages earned and owed for all the work they performed, including pre-shift, post shift and during
28 meal period off-the-clock work.

1 38. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
2 exempt employees, subject to the requirements of the California Labor Code.

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

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

10 41. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
11 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
12 for the time spent working while off-the-clock. DEFENDANTS' uniform policy and practice to
13 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked
14 in accordance with applicable law is evidenced by DEFENDANTS' business records.

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

1 To date, DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time
2 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.
3 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
4 \$75,000.

5 **H. CLASS ACTION ALLEGATIONS**

6 43. PLAINTIFF brings the First through Eighth Causes of Action as a class action
7 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
8 previously were employed by Defendant Tasteful Selections and/or Defendant Esparza
9 Enterprises who performed work for Defendant Tasteful Selections in California and classified as
10 non-exempt employees (“CALIFORNIA CLASS”) during the period beginning four years prior
11 to the filing of the Complaint and ending on a date determined by the Court (“CLASS PERIOD”).

12 44. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
13 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
14 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
15 and illegal meal and rest period policies. Defendant further failed to reimburse for business
16 expenses, failed to compensate for off-the-clock work, failed to provide accurate itemized wage
17 statements, and failed to maintain required records, and interest, statutory and civil penalties,
18 attorney’s fees, costs, and expenses.

19 45. The members of the class are so numerous that joinder of all class members is
20 impractical.

21 46. Common questions of law and fact regarding DEFENDANTS’ conduct, including
22 but not limited to, the off-the-clock work, unpaid mean and rest period premiums, failing to
23 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
24 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
25 minimum wage and overtime, exist as to all members of the class and predominate over any
26 questions affecting solely any individual members of the class. Among the questions of law and
27 fact common to the class are:
28

- 1 i. Whether DEFENDANTS maintained legally compliant meal period policies and
- 2 practices;
- 3 ii. Whether DEFENDANTS maintained legally compliant rest period policies and
- 4 practices;
- 5 iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
- 6 CLASS Members accurate premium payments for missed meal and rest periods;
- 7 iv. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
- 8 CLASS Members accurate overtime wages;
- 9 v. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
- 10 CLASS Members at least minimum wage for all hours worked;
- 11 vi. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA
- 12 CLASS Members for required business expenses;
- 13 vii. Whether DEFENDANTS issued legally compliant wage statements;
- 14 viii. Whether DEFENDANTS committed an act of unfair competition by
- 15 systematically failing to record and pay PLAINTIFF and the other members of the
- 16 CALIFORNIA CLASS for all time worked;
- 17 ix. Whether DEFENDANTS committed an act of unfair competition by
- 18 systematically failing to record all meal and rest breaks missed by PLAINTIFF
- 19 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed
- 20 the benefit of this work, required employees to perform this work and permits or
- 21 suffers to permit this work;
- 22 x. Whether DEFENDANTS committed an act of unfair competition in violation of
- 23 the UCL, by failing to provide the PLAINTIFF and the other members of the
- 24 CALIFORNIA CLASS with the legally required meal and rest periods.

25 47. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
26 a result of DEFENDANTS’ conduct and actions alleged herein.

27 48. PLAINTIFF’s claims are typical of the claims of the class, and PLAINTIFF has
28 the same interests as the other members of the class.

1 49. PLAINTIFF will fairly and adequately represent and protect the interests of the
2 CALIFORNIA CLASS Members.

3 50. PLAINTIFF retained able class counsel with extensive experience in class action
4 litigation.

5 51. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
6 interests of the other CALIFORNIA CLASS Members.

7 52. There is a strong community of interest among PLAINTIFF and the members of
8 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
9 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
10 sustained.

11 53. The questions of law and fact common to the CALIFORNIA CLASS Members
12 predominate over any questions affecting only individual members, including legal and factual
13 issues relating to liability and damages.

14 54. A class action is superior to other available methods for the fair and efficient
15 adjudication of this controversy because joinder of all class members is impractical. Moreover,
16 since the damages suffered by individual members of the class may be relatively small, the
17 expense and burden of individual litigation makes it practically impossible for the members of the
18 class individually to redress the wrongs done to them. Without class certification and
19 determination of declaratory, injunctive, statutory and other legal questions within the class
20 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
21 create the risk of:

- 22 i. Inconsistent or varying adjudications with respect to individual members of the
23 CALIFORNIA CLASS which would establish incompatible standards of conduct
24 for the parties opposing the CALIFORNIA CLASS; and/or,
25 ii. Adjudication with respect to individual members of the CALIFORNIA CLASS
26 which would as a practical matter be dispositive of the interests of the other
27 members not party to the adjudication or substantially impair or impeded their
28 ability to protect their interests.

1 55. Class treatment provides manageable judicial treatment calculated to bring an
2 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
3 the conduct of DEFENDANTS.

4 **FIRST CAUSE OF ACTION**

5 **Unlawful Business Practices**

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

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

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

11 57. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
12 Code § 17021.

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

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

24 59. By the conduct alleged herein, DEFENDANT has engaged and continues to
25 engage in a business practice which violates California law, including but not limited to, the
26 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
27 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
28 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

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

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1 78. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately calculated the amount of time worked and consequently underpaid the actual time
3 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
4 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
5 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
6 laws and regulations.

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

10 80. During the CLASS PERIOD, PLAINTIFF and the other members of the
11 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
12 failure to pay all earned wages.

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

18 82. DEFENDANT knew or should have known that PLAINTIFF and the other
19 members of the CALIFORNIA CLASS are under-compensated for their time worked.
20 DEFENDANT systematically elected, either through intentional malfeasance or gross
21 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice
22 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
23 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
24 for their time worked.

25 83. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
27 and provide them with the requisite compensation, DEFENDANT acted and continues to act
28 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the

1 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
2 consequences to them, and with the despicable intent of depriving them of their property and legal
3 rights, and otherwise causing them injury in order to increase company profits at the expense of
4 these employees.

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

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

23 86. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
24 for DEFENDANT's willful and intentional violations of the California Labor Code and the
25 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
26 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
27 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.
28

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

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

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

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

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

21 92. In committing these violations of the California Labor Code, DEFENDANT
22 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
23 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
24 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
25 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
26 regulations.

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1 93. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,
2 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
3 compensation for overtime worked.

4 94. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
5 from the overtime requirements of the law. None of these exemptions are applicable to the
6 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
7 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
8 agreement that would preclude the causes of action contained herein this Complaint. Rather,
9 PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA CLASS based on
10 DEFENDANT’s violations of non- negotiable, non-waivable rights provided by the State of
11 California.

12 95. During the CLASS PERIOD, PLAINTIFF and the other members of the
13 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
14 constituting a failure to pay all earned wages.

15 96. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
16 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
17 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
18 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
19 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as
20 evidenced by DEFENDANT’s business records and witnessed by employees.

21 97. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
22 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all
23 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
24 CLASS have suffered and will continue to suffer an economic injury in amounts which are
25 presently unknown to them, and which will be ascertained according to proof at trial.

26 98. DEFENDANTS knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
28 DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
2 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
3 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

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

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1 **FOURTH CAUSE OF ACTION**

2 **Failure To Provide Required Meal Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

4 **FIFTH CAUSE OF ACTION**

5 **Failure To Provide Required Rest Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

4 **SIXTH CAUSE OF ACTION**

5 **Failure To Provide Accurate Itemized Statements**

6 **(Cal. Lab. Code §§ 226)**

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

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

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

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

1 ix. all applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each hourly rate by the employee.

3 111. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA
4 CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest
5 period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide
6 PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage
7 statements which failed to show, among other things, the total hours worked and all applicable
8 hourly rates in effect during the pay period and the corresponding amount of time worked at each
9 hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods. Further,
10 from time to time, DEFENDANTS included Paid Time Off (“PTO”) and Holiday hours into the
11 computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2), notwithstanding
12 the fact that PTO and Holiday hours are not considered hours worked. DEFENDANTS’ inclusion
13 of PTO and Holiday hours into the total hours worked in itemized wage statements issued to
14 PLAINTIFF and other CALIFORNIA CLASS Members violates Cal. Lab. Code § 226(a)(2). As
15 such, the wage statements issued to PLAINTIFF and members of the CALIFORNIA CLASS
16 violated Cal. Lab. Code § 226(a)(2). In addition to the foregoing, DEFENDANTS failed to
17 provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS
18 that complied with the requirements of California Labor Code Section 226.

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

3 **SEVENTH CAUSE OF ACTION**

4 **Failure To Pay Wages When Due**

5 **(Cal. Lab. Code §§ 203)**

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

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

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

11 As used in this article:

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

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

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

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

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

1 for purposes of the requirement to provide payment within 72 hours of the notice of
2 quitting.

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

5 118. Cal. Lab. Code § 203 provides:

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

11 119. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
12 terminated, and DEFENDANT has not tendered payment of wages to these employees who were
13 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
14 required by law.

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

20 **EIGHTH CAUSE OF ACTION**

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

22 **(Cal. Lab. Code §§ 2802)**

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

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

27 122. Cal. Lab. Code § 2802 provides, in relevant part, that:
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1 An employer shall indemnify his or her employee for all necessary expenditures or losses
2 incurred by the employee in direct consequence of the discharge of his or her duties, or of
3 his or her obedience to the directions of the employer, even though unlawful, unless the
4 employee, at the time of obeying the directions, believed them to be unlawful

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

22 124. PLAINTIFF therefore demands reimbursement on behalf of the members of the
23 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
24 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with
25 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

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1 **NINTH CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§2698 et seq.)**

4 **(Alleged by PLAINTIFFS against all Defendant)**

5 125. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
6 herein, the prior paragraphs of this Complaint.

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

16 127. PLAINTIFF, and such persons that may be added from time to time who satisfy
17 the requirements and exhaust the administrative procedures under the Private Attorney General
18 Act, bring this Representative Action on behalf of the State of California with respect to himself
19 and all persons who are or previously were employed by Defendant Tasteful Selections and/or
20 Defendant Esparza Enterprises who performed work for Defendant Tasteful Selections in
21 California and classified as non-exempt employees (the "AGGRIEVED EMPLOYEES") during
22 the time period of July 20, 2021 until the present (the "PAGA PERIOD").

23 128. On July 20, 2022, PLAINTIFF gave written notice by certified mail to the Labor
24 and Workforce Development Agency (the "Agency") and the employer of the specific
25 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
26 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
27 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
28 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA

1 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
2 EMPLOYEES as herein defined.

3 129. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
4 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of
5 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246,
6 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14 1198, 1198.5, 1199, 2802, and 2804
7 in the following amounts:

8 a. For violation of Labor Code Sections 201, 202, 203, and 204,
9 one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per
10 pay period for the initial violation and two hundred dollars (\$200) for
11 AGGRIEVED EMPLOYEE per pay period for each subsequent
12 violation [penalty per Labor Code Section 2699(f)(2)];

13 b. For violations of Labor Code Section 226(a), a civil penalty
14 in the amount of two hundred fifty dollars (\$250) for each
15 AGGRIEVED EMPLOYEE for any initial violation and one
16 thousand dollars for each subsequent violation [penalty per Labor
17 Code Section 226.3];

18 c. For violations of Labor Code Sections 204, a civil penalty in
19 the amount of one hundred dollars (\$100) for each AGGRIEVED
20 EMPLOYEE for any initial violation and two hundred dollars (\$200)
21 for AGGRIEVED EMPLOYEE for each subsequent violation
22 [penalty per Labor Code Section 210];

23 d. For violations of Labor Code Sections 226.7, 510 and 512, a
24 civil penalty in the amount of fifty dollars (\$50) for each underpaid
25 AGGRIEVED EMPLOYEE for the initial violation and hundred
26 dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for
27 each subsequent violation [penalty per Labor Code Section 558];

28 e. For violations of Labor Code Section 2269(a), a civil penalty

1 in the amount of two hundred fifty dollars (\$250) per AGGRIEVED
2 EMPLOYEE per violation in an initial citation and one thousand
3 dollars (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent
4 violation [penalty per Labor Code Section 226.3];

5 f. For violations of Labor Code Section 1174(d), a civil penalty
6 in the amount of five hundred (\$500) dollars for per AGGRIEVED
7 EMPLOYEE [penalty per Labor Code Section 1174.5].

8 g. For violations of Labor Code Sections 1194, 1194.2, 1197,
9 1198 and 1199, a civil penalty in the amount of one hundred dollars
10 (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial
11 violation and two hundred dollars fifty (\$250) per AGGRIEVED
12 EMPLOYEE per pay period for each subsequent violation [penalty
13 per Labor Code Section].

14 h. For all provisions of the Labor Code for which civil penalty
15 is not specifically provided, Labor Code § 2699(f) imposes upon
16 Defendant a penalty of one hundred dollars (\$100) for each
17 AGGRIEVED EMPLOYEE per pay period for the initial violation
18 and two hundred dollars (\$200) for each AGGRIEVED EMPLOYEE
19 per pay period for each subsequent violation. PLAINTIFF and the
20 AGGRIEVED EMPLOYEES are entitled to an award of reasonable
21 attorney’s fees and costs in connection with their claims for civil
22 penalties pursuant to Labor Code Section 2699(g)(1).

23 130. To the extent that any of the conduct and violations alleged herein did not affect
24 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
25 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
26 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
27 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor
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1 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
2 committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).).

3 **PRAYER FOR RELIEF**

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

6 1. On behalf of the CALIFORNIA CLASS:

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

17 2. On behalf of the CALIFORNIA CLASS:

- 18 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
19 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
20 to Cal. Code of Civ. Proc. § 382;
- 21 b. Compensatory damages, according to proof at trial, including compensatory
22 damages for overtime compensation and separately owed rest periods, due to
23 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
24 applicable CLASS PERIOD plus interest thereon at the statutory rate;
- 25 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
26 the applicable IWC Wage Order;
- 27 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
28 which a violation occurs and one hundred dollars (\$100) per each member of the

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CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226

e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

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

4. On all claims:

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

DATED: September 23, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: September 23, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1



5440 Morehouse Drive, Suite 3600
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July 19, 2022

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

TASTEFUL SELECTIONS, LLC

c/o Robert Bender
13003 Di Giorgio Road
Arvin, CA 93202

Sent via Certified Mail and Return Receipt 7022 0410 0001 5846 7100

ESPARZA ENTERPRISES, INC.

c/o Justice Aaron Gradowitz
3851 Fruitvale Ave.
Bakersfield, CA 93308

Sent via Certified Mail and Return Receipt 7022 0410 0001 5846 7117

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and 3357, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff LUIS GOMEZ (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendants TASTEFUL SELECTIONS, LLC. (“Defendant Tasteful Selections”) and ESPARZA ENTERPRISES, INC. (“Defendant Esparza Enterprises”) (collectively “Defendants”). Plaintiff has been employed by Defendants in California since August of 2021 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence, Plaintiff contend that Defendants failed to fully compensate him and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendants’ conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6,

221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, 3357 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant Tasteful Selections and/or Defendant Esparza Enterprises who performed work for Defendant Tasteful Selections in California during the relevant claim period.

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

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

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

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

Very truly yours,
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

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Attorneys for Plaintiff LUIS GOMEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

LUIS GOMEZ, an individual, on behalf of himself and on behalf of all persons similarly situated,

Plaintiff,

v.

TASTEFUL SELECTIONS, LLC., a Wisconsin limited liability company; ESPARZA ENTERPRISES, INC., a California corporation; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802.

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant TASTEFUL SELECTIONS, LLC. (“Defendant Tasteful Selections”) is a Wisconsin limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. Defendant ESPARZA ENTERPRISES, INC. (“Defendant Esparza Enterprises”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

3. Defendant Tasteful Selections and Defendant Esparza Enterprises were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

4. Defendant Esparza Enterprises owns and operates staffing agencies throughout the United States and staffs many companies in California, including Defendant Tasteful Selections in Kern County where PLAINTIFF worked.

5. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently

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

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

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

23 8. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
24 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
25 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
26 employee a wage less than the minimum fixed by California state law, and as such, are subject to
27 civil penalties for each underpaid employee
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1 9. PLAINTIFF has been employed by DEFENDANTS in California since August of
2 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
3 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
4 and overtime wages due for all time worked.

5 10. PLAINTIFF brings this Class Action on behalf of himself and a California class,
6 defined as all persons who are or previously were employed by Defendant Tasteful Selections
7 and/or Defendant Esparza Enterprises who performed work for Defendant Tasteful Selections in
8 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
9 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
10 date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
11 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
12 (\$5,000,000.00).

13 11. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
14 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
15 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
16 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
17 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
18 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
19 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
20 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
21 other members of the CALIFORNIA CLASS who have been economically injured by
22 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
23 relief.

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

27 13. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
28 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named

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

4 **JURISDICTION AND VENUE**

5 14. This 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 PLAINTIFF and similarly situated employees of
8 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

9 15. Venue is proper in this Court pursuant to California Code of Civil Procedure,
10 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
11 DEFENDANTS (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 wrongful
13 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

14 **THE CONDUCT**

15 16. In violation of the applicable sections of the California Labor Code and the
16 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
17 matter of company policy, practice and procedure, intentionally, knowingly and systematically
18 failed to provide legally compliant meal and rest periods, failed to accurately compensate
19 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
20 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
21 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to compensate
22 PLAINTIFF and other members of the CALIFORNIA CLASS meal rest premiums at the regular
23 rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business
24 expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with
25 accurate itemized wage statements showing, among other things, all applicable hourly rates in
26 effect during the pay periods and the corresponding amount of time worked at each hourly rate.
27 DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate
28 and full payment for all time worked as required by California law which allows DEFENDANTS

1 to illegally profit and gain an unfair advantage over competitors who comply with the law. To
2 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
3 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

4 **A. Meal Period Violations**

5 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
6 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
7 meaning the time during which an employee is subject to the control of an employer, including
8 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
9 PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work
10 without paying them for all the time they were under DEFENDANTS' control. Specifically, as a
11 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
12 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
13 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work
14 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.
15 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. More
16 specifically, from time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
17 required by DEFENDANTS to work through their meal breaks in order to meet DEFENDANTS'
18 prescribed labor hours to perform all the tasks required of them by DEFENDANTS. PLAINTIFF
19 and other CALIFORNIA CLASS Members were required to perform work-related tasks.
20 Additionally, PLAINTIFF and other CALIFORNIA CLASS Members were required to perform
21 as much work as possible and as quickly as possible in order to meet DEFENDANTS' strict
22 performance and production requirements. As a result, the PLAINTIFF and other CALIFORNIA
23 CLASS Members forfeited minimum wage and overtime wages by regularly working without
24 their time being accurately recorded and without compensation at the applicable minimum wage
25 and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and
26 other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS'
27 business records.

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

17 **B. Rest Period Violations**

18 19. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
19 CALIFORNIA CLASS members were also required from time to time to work in excess of four
20 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
21 requirements and DEFENDANTS' inadequate staffing. More specifically, from time to time,
22 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to
23 work through their rest breaks in order to meet DEFENDANTS' prescribed labor hours to perform
24 all the tasks required of them by DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS
25 Members were required to perform work-related tasks. Additionally, PLAINTIFF and other
26 CALIFORNIA CLASS Members were required to perform as much work as possible and as
27 quickly as possible in order to meet DEFENDANTS' strict performance and production
28 requirements. Further, for the same reasons these employees were denied their first rest periods

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

11 **C. Unlawful Rounding Violations**

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

24 21. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
25 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
26 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
27 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
28 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an

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

5 **D. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
6 **Sick Pay**

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

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

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

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

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

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

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1 **E. Unreimbursed Business Expenses**

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

13 28. In the course of their employment, DEFENDANTS required PLAINTIFF and
14 other CALIFORNIA CLASS Members to use their personal cell phones as a result of and in
15 furtherance of their job duties as employees for DEFENDANT. But for the use of their own
16 personal cell phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete
17 their essential job duties, including but not limited to, sending and receiving work-related
18 communications from DEFENDANTS. However, DEFENDANTS unlawfully failed to
19 reimburse PLAINTIFF and other CALIFORNIA CLASS Members for their use of their personal
20 cell phones. As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF
21 and other CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were
22 not limited to, costs related to the use of their personal cellular phones, all on behalf of and for
23 the benefit of DEFENDANT.

24 **F. Wage Statement Violations**

25 29. California Labor Code Section 226 requires an employer to furnish its employees
26 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
27 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
28 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name

1 of the employee and only the last four digits of the employee's social security number or an
2 employee identification number other than a social security number, (8) the name and address of
3 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
4 period and the corresponding number of hours worked at each hourly rate by the employee.

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

13 31. In addition to the violations described above, DEFENDANTS, from time to time,
14 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
15 that comply with Cal. Lab. Code § 226.

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

20 **G. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

21 33. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
22 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
23 meaning the time during which an employee is subject to the control of an employer, including all
24 the time the employee is suffered or permitted to work. From time to time, DEFENDANTS required
25 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
26 they were under DEFENDANTS' control. Specifically, PLAINTIFF performed work before and
27 after the beginning of his shift, spending time under the DEFENDANTS' control for which he was
28 not compensated. More specifically, from time to time, PLAINTIFF and other CALIFORNIA

1 CLASS Members were required by DEFENDANTS to perform work before and after the beginning
2 of their shifts in order to meet DEFENDANTS' prescribed labor hours to perform all the tasks
3 required of them by DEFENDANTS. Additionally, since DEFENDANTS required PLAINTIFF
4 and other CALIFORNIA CLASS Members to perform as much work as possible and as quickly as
5 possible in order to meet DEFENDANTS' strict performance and production requirements,
6 PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to work
7 off-the-clock before and after their shifts, and during off-duty meal breaks, in order to meet
8 DEFENDANTS' strict requirements.

9 34. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
10 minimum wage and overtime compensation by regularly working without their time being
11 accurately recorded and without compensation at the applicable minimum wage and overtime rates.
12 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS
13 necessary wages for attending for performing work at DEFENDANTS' direction, request and
14 benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF
15 and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS'
16 business records.

17 35. DEFENDANTS directed and directly benefited from the uncompensated off-the-
18 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

19 36. DEFENDANTS controlled the work schedules, duties, protocols, applications,
20 assignments, and employment conditions of PLAINTIFF and the other members of the
21 CALIFORNIA CLASS.

22 37. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
23 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
24 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
25 wages earned and owed for all the work they performed, including pre-shift, post shift and during
26 meal period off-the-clock work.

27 38. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
28 exempt employees, subject to the requirements of the California Labor Code.

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

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

8 41. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
9 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
10 for the time spent working while off-the-clock. DEFENDANTS' uniform policy and practice to
11 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked
12 in accordance with applicable law is evidenced by DEFENDANTS' business records.

13 42. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
14 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
15 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
16 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
17 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
18 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
19 with a rest break, they required PLAINTIFF to remain on-duty, on-call, and on-premises for the
20 rest break. DEFENDANT policy caused PLAINTIFF to remain on-call, on-duty, and on-premises
21 during what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal
22 and rest breaks without additional compensation and in accordance with DEFENDANT'S strict
23 corporate policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs
24 that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse
25 PLAINTIFF for required business expenses related to the personal expenses incurred for the use
26 of his personal cell phone, on behalf of and in furtherance of his employment with DEFENDANT.
27 To date, DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time
28 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.

1 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
2 \$75,000.

3 **H. CLASS ACTION ALLEGATIONS**

4 43. PLAINTIFF brings the First through Eighth Causes of Action as a class action
5 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
6 previously were employed by Defendant Tasteful Selections and/or Defendant Esparza
7 Enterprises who performed work for Defendant Tasteful Selections in California and classified as
8 non-exempt employees (“CALIFORNIA CLASS”) during the period beginning four years prior
9 to the filing of the Complaint and ending on a date determined by the Court (“CLASS PERIOD”).

10 44. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
11 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
12 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
13 and illegal meal and rest period policies. Defendant further failed to reimburse for business
14 expenses, failed to compensate for off-the-clock work, failed to provide accurate itemized wage
15 statements, and failed to maintain required records, and interest, statutory and civil penalties,
16 attorney’s fees, costs, and expenses.

17 45. The members of the class are so numerous that joinder of all class members is
18 impractical.

19 46. Common questions of law and fact regarding DEFENDANTS’ conduct, including
20 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failing to
21 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
22 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
23 minimum wage and overtime, exist as to all members of the class and predominate over any
24 questions affecting solely any individual members of the class. Among the questions of law and
25 fact common to the class are:

- 26 i. Whether DEFENDANTS maintained legally compliant meal period policies and
27 practices;

- 1 ii. Whether DEFENDANTS maintained legally compliant rest period policies and
- 2 practices;
- 3 iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
- 4 CLASS Members accurate premium payments for missed meal and rest periods;
- 5 iv. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
- 6 CLASS Members accurate overtime wages;
- 7 v. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
- 8 CLASS Members at least minimum wage for all hours worked;
- 9 vi. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA
- 10 CLASS Members for required business expenses;
- 11 vii. Whether DEFENDANTS issued legally compliant wage statements;
- 12 viii. Whether DEFENDANTS committed an act of unfair competition by
- 13 systematically failing to record and pay PLAINTIFF and the other members of the
- 14 CALIFORNIA CLASS for all time worked;
- 15 ix. Whether DEFENDANTS committed an act of unfair competition by
- 16 systematically failing to record all meal and rest breaks missed by PLAINTIFF
- 17 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed
- 18 the benefit of this work, required employees to perform this work and permits or
- 19 suffers to permit this work;
- 20 x. Whether DEFENDANTS committed an act of unfair competition in violation of
- 21 the UCL, by failing to provide the PLAINTIFF and the other members of the
- 22 CALIFORNIA CLASS with the legally required meal and rest periods.

23 47. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
24 a result of DEFENDANTS’ conduct and actions alleged herein.

25 48. PLAINTIFF’s claims are typical of the claims of the class, and PLAINTIFF has
26 the same interests as the other members of the class.

27 49. PLAINTIFF will fairly and adequately represent and protect the interests of the
28 CALIFORNIA CLASS Members.

1 50. PLAINTIFF retained able class counsel with extensive experience in class action
2 litigation.

3 51. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
4 interests of the other CALIFORNIA CLASS Members.

5 52. There is a strong community of interest among PLAINTIFF and the members of
6 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
7 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
8 sustained.

9 53. The questions of law and fact common to the CALIFORNIA CLASS Members
10 predominate over any questions affecting only individual members, including legal and factual
11 issues relating to liability and damages.

12 54. A class action is superior to other available methods for the fair and efficient
13 adjudication of this controversy because joinder of all class members is impractical. Moreover,
14 since the damages suffered by individual members of the class may be relatively small, the
15 expense and burden of individual litigation makes it practically impossible for the members of the
16 class individually to redress the wrongs done to them. Without class certification and
17 determination of declaratory, injunctive, statutory and other legal questions within the class
18 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
19 create the risk of:

- 20 i. Inconsistent or varying adjudications with respect to individual members of the
21 CALIFORNIA CLASS which would establish incompatible standards of conduct
22 for the parties opposing the CALIFORNIA CLASS; and/or,
23 ii. Adjudication with respect to individual members of the CALIFORNIA CLASS
24 which would as a practical matter be dispositive of the interests of the other
25 members not party to the adjudication or substantially impair or impeded their
26 ability to protect their interests.

1 55. Class treatment provides manageable judicial treatment calculated to bring an
2 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
3 the conduct of DEFENDANTS.

4 **FIRST CAUSE OF ACTION**

5 **Unlawful Business Practices**

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

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

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

11 57. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
12 Code § 17021.

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

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

24 59. By the conduct alleged herein, DEFENDANT has engaged and continues to
25 engage in a business practice which violates California law, including but not limited to, the
26 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
27 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
28 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
29 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
30 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

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

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SECOND CAUSE OF ACTION

Failure To Pay Minimum Wages

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

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

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

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

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

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

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

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

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

1 78. In committing these violations of the California Labor Code, DEFENDANT
2 inaccurately calculated the amount of time worked and consequently underpaid the actual time
3 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
4 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
5 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
6 laws and regulations.

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

10 80. During the CLASS PERIOD, PLAINTIFF and the other members of the
11 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
12 failure to pay all earned wages.

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

18 82. DEFENDANT knew or should have known that PLAINTIFF and the other
19 members of the CALIFORNIA CLASS are under-compensated for their time worked.
20 DEFENDANT systematically elected, either through intentional malfeasance or gross
21 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice
22 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
23 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
24 for their time worked.

25 83. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
27 and provide them with the requisite compensation, DEFENDANT acted and continues to act
28 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the

1 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
2 consequences to them, and with the despicable intent of depriving them of their property and legal
3 rights, and otherwise causing them injury in order to increase company profits at the expense of
4 these employees.

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

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

23 86. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
24 for DEFENDANT's willful and intentional violations of the California Labor Code and the
25 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
26 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
27 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.
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1 87. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
2 public policy, an employer must timely pay its employees for all hours worked.

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

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

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

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

21 92. In committing these violations of the California Labor Code, DEFENDANT
22 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
23 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
24 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
25 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
26 regulations.

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1 93. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,
2 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
3 compensation for overtime worked.

4 94. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
5 from the overtime requirements of the law. None of these exemptions are applicable to the
6 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
7 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
8 agreement that would preclude the causes of action contained herein this Complaint. Rather,
9 PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA CLASS based on
10 DEFENDANT’s violations of non- negotiable, non-waivable rights provided by the State of
11 California.

12 95. During the CLASS PERIOD, PLAINTIFF and the other members of the
13 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
14 constituting a failure to pay all earned wages.

15 96. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
16 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
17 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
18 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
19 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as
20 evidenced by DEFENDANT’s business records and witnessed by employees.

21 97. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
22 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all
23 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
24 CLASS have suffered and will continue to suffer an economic injury in amounts which are
25 presently unknown to them, and which will be ascertained according to proof at trial.

26 98. DEFENDANTS knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
28 DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
2 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
3 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

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

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FOURTH CAUSE OF ACTION

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

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

102. During the CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA 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, PLAINTIFF and other CALIFORNIA CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

4 **FIFTH CAUSE OF ACTION**

5 **Failure To Provide Required Rest Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

4 **SIXTH CAUSE OF ACTION**

5 **Failure To Provide Accurate Itemized Statements**

6 **(Cal. Lab. Code §§ 226)**

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

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

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

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

1 ix. all applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each hourly rate by the employee.

3 111. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA
4 CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest
5 period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide
6 PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage
7 statements which failed to show, among other things, the total hours worked and all applicable
8 hourly rates in effect during the pay period and the corresponding amount of time worked at each
9 hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods. Further,
10 from time to time, DEFENDANTS included Paid Time Off (“PTO”) and Holiday hours into the
11 computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2), notwithstanding
12 the fact that PTO and Holiday hours are not considered hours worked. DEFENDANTS’ inclusion
13 of PTO and Holiday hours into the total hours worked in itemized wage statements issued to
14 PLAINTIFF and other CALIFORNIA CLASS Members violates Cal. Lab. Code § 226(a)(2). As
15 such, the wage statements issued to PLAINTIFF and members of the CALIFORNIA CLASS
16 violated Cal. Lab. Code § 226(a)(2). In addition to the foregoing, DEFENDANTS failed to
17 provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS
18 that complied with the requirements of California Labor Code Section 226.

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

3 **SEVENTH CAUSE OF ACTION**

4 **Failure To Pay Wages When Due**

5 **(Cal. Lab. Code §§ 203)**

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

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

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

11 As used in this article:

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

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

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

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

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

1 for purposes of the requirement to provide payment within 72 hours of the notice of
2 quitting.

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

5 118. Cal. Lab. Code § 203 provides:

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

11 119. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
12 terminated, and DEFENDANT has not tendered payment of wages to these employees who were
13 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
14 required by law.

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

20 **EIGHTH CAUSE OF ACTION**

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

22 **(Cal. Lab. Code §§ 2802)**

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

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

27 122. Cal. Lab. Code § 2802 provides, in relevant part, that:
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1 An employer shall indemnify his or her employee for all necessary expenditures or losses
2 incurred by the employee in direct consequence of the discharge of his or her duties, or of
3 his or her obedience to the directions of the employer, even though unlawful, unless the
4 employee, at the time of obeying the directions, believed them to be unlawful

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

22 124. PLAINTIFF therefore demands reimbursement on behalf of the members of the
23 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
24 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with
25 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

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PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

2. On behalf of the CALIFORNIA CLASS:

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

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violation of Cal. Lab. Code § 226

e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On all claims:

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

DATED: July 20, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: July 20, 2022

ZAKAY LAW GROUP, APLC

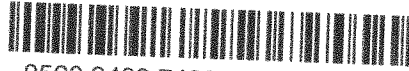
By: 
Shani O. Zakay
Attorney for PLAINTIFF

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Esparza Enterprises, Inc.
 c/o Justice Aaron Gradowitz
 3851 Fruitvale Ave.
 Bakersfield, CA 93308



9590 9402 7420 2055 3645 85

2. Article Number (Transfer from service label)

7022 0410 0001 5846 7117

PS Form 3811, July 2020 PSN 7530-02-000-9053

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A. Signature

X *Ana Sanchez*

- Agent
- Addressee

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Ana Sanchez

C. Date of Delivery

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7/20 Gomez 007-335

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Domestic Return Receipt