

**SUMMONS
(CITACION JUDICIAL)**

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
11/04/2022 at 09:25:28 AM
Clerk of the Superior Court
By Katie Winburn, Deputy Clerk

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

TRANSFORM PARTNERS LLC, a California limited liability company; and DOES 1-50, Inclusive,

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

MIGUEL MONTOYA, an individual, on behalf of himself and on behalf of all persons similarly situated,

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

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Hall of Justice
330 W Broadway, San Diego, CA 92101

CASE NUMBER:
(Número del Caso): 37-2022-00044624-CU-OE-CTL

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. 5440 Morehouse Drive, Suite 3600, Los Angeles, CA 90012, T: (619) 255-9047

DATE: 11/04/2022 Clerk, by K. Winburn, Deputy
(Fecha) (Secretario) K. Winburn (Adjunto)

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



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- 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):
- by personal delivery on (date):

JCL LAW FIRM, APC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MIGUEL MONTOYA, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

TRANSFORM PARTNERS LLC, a California
limited liability company; and DOES 1-50,
Inclusive,

Defendants.

Case No: 37-2022-00044624-CU-OE-CTL

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 MIGUEL MONTOYA (“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 TRANSFORM PARTNERS LLC (“DEFENDANT”) is a California 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 is a retailer of office equipment in the State of California, including in the County of San Diego, where PLAINTIFF worked.

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

1 or more of the events and happenings that proximately caused the injuries and damages
2 hereinafter alleged.

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

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

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

22 7. PLAINTIFF was employed by DEFENDANTS in from January of 2018 to
23 February of 2022 and was at all times classified by DEFENDANT as a non-exempt employee,
24 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
25 minimum and overtime wages due for all time worked.

26 8. PLAINTIFF brings this Class Action on behalf of himself and a California class,
27 defined as all persons who are or previously were employed by DEFENDANT in California and
28 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period

1 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
2 by the Court (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of the
3 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

15 10. DEFENDANTS’ uniform policies and practices alleged herein were unlawful,
16 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain
17 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

18 11. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
19 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
20 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
21 injured by DEFENDANTS’ past and current unlawful conduct, and all other appropriate legal and
22 equitable relief.

23 **JURISDICTION AND VENUE**

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

28

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

20 16. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
21 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
22 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
23 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
24 other CALIFORNIA CLASS Members were required from time to time to perform work as
25 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
26 meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
27 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
28 these employees were required by DEFENDANTS to work ten (10) hours of work from time to

1 time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS
2 Members does not qualify for limited and narrowly construed “on-duty” meal period exception.
3 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS
4 Members were, from time to time, required to remain on duty and on call. PLAINTIFF and other
5 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
6 compensation and in accordance with DEFENDANTS’ strict corporate policy and practice.

7 **B. Rest Period Violations**

8 17. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
9 CALIFORNIA CLASS members were also required from time to time to work in excess of four
10 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
11 requirements and DEFENDANTS’ inadequate staffing. More specifically, from time to time,
12 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to
13 work through their rest breaks in order to meet DEFENDANTS’ prescribed labor hours to perform
14 all the tasks required of them by DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS
15 Members were required to perform work-related tasks. Additionally, PLAINTIFF and other
16 CALIFORNIA CLASS Members were required to perform as much work as possible and as
17 quickly as possible in order to meet DEFENDANTS’ strict performance and production
18 requirements. Further, for the same reasons these employees were denied their first rest periods
19 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time
20 to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between
21 six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
22 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they
23 were provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were,
24 from time to time, required to remain on duty and/or on call. PLAINTIFF and other
25 CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As
26 a result of their rigorous work schedules and DEFENDANTS’ inadequate staffing, PLAINTIFF
27 and other CALIFORNIA CLASS Members were from time to time denied their proper rest
28 periods by DEFENDANTS and DEFENDANTS’ managers.

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

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

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

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

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

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

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

23 **D. Unreimbursed Business Expenses**

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

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

7 24. In the course of their employment, DEFENDANTS required PLAINTIFF and
8 other CALIFORNIA CLASS Members to use their personal vehicles as a result of and in
9 furtherance of their job duties as employees for DEFENDANT. But for the use of their own
10 personal vehicles, PLAINTIFF and the CALIFORNIA CLASS Members could not complete their
11 essential job duties, including but not limited to, driving between warehouses to transport
12 products. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other
13 CALIFORNIA CLASS Members for their use of their personal vehicles. As a result, in the course
14 of their employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS
15 Members incurred unreimbursed business expenses, but were not limited to, costs related to the
16 use of their personal vehicles, all on behalf of and for the benefit of DEFENDANT.

17 **E. Wage Statement Violations**

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

26 26. From time to time during the CLASS PERIOD, when PLAINTIFF and other
27 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
28 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed

1 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
2 wage statements which failed to show, among other things, the total hours worked and all
3 applicable hourly rates in effect during the pay period and the corresponding amount of time
4 worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest
5 periods.

6 27. In addition to the violations described above, DEFENDANTS, from time to time,
7 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
8 that comply with Cal. Lab. Code § 226.

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

13 **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

14 29. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
15 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
16 meaning the time during which an employee is subject to the control of an employer, including all
17 the time the employee is suffered or permitted to work. From time to time, DEFENDANTS required
18 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
19 they were under DEFENDANTS' control. Specifically, PLAINTIFF performed work off the clock
20 during what was supposed to be his off-duty meal period, spending time under the DEFENDANTS'
21 control for which he was not compensated. More specifically, from time to time, PLAINTIFF and
22 other CALIFORNIA CLASS Members were required by DEFENDANTS to perform work off-the-
23 clock during what was supposed to be their off-duty meal periods in order to meet DEFENDANTS'
24 prescribed labor hours to perform all the tasks required of them by DEFENDANTS.

25 30. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
26 minimum wage and overtime compensation by regularly working without their time being
27 accurately recorded and without compensation at the applicable minimum wage and overtime rates.
28 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS

1 necessary wages for attending for performing work at DEFENDANTS' direction, request and
2 benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF
3 and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS'
4 business records.

5 31. DEFENDANTS directed and directly benefited from the uncompensated off-the-
6 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

7 32. DEFENDANTS controlled the work schedules, duties, protocols, applications,
8 assignments, and employment conditions of PLAINTIFF and the other members of the
9 CALIFORNIA CLASS.

10 33. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
11 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
12 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
13 wages earned and owed for all the work they performed, including but not limited to, meal period
14 off-the-clock work.

15 34. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
16 exempt employees, subject to the requirements of the California Labor Code.

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

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

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

1 **G. Failure to Provide Wages When Due**

2 38. Pursuant to Cal. Lab. Code § 203, “If an employer willfully fails to pay, without
3 abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
4 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
5 from the due date thereof at the same rate until paid or until an action therefor is commenced; but
6 the wages shall not continue for more than 30 days.” DEFENDANT from time to time failed to
7 timely pay PLAINTIFF and CALIFORNIA CLASS Members their final wages in accordance
8 with Cal. Lab. Code §§ 201 and 202. As a result, PLAINTIFF and those CALIFORNIA CLASS
9 Members’ whose employment have ended are entitled to waiting time penalties pursuant to Cal.
10 Lab. Code § 203.

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

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

17 **I. Unlawful Deductions**

18 40. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
19 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
20 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
21 DEFENDANTS violated Labor Code § 221.

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

1 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was
2 supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
3 without additional compensation and in accordance with DEFENDANT’S strict corporate policy
4 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
5 comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF
6 for required business expenses related to the personal expenses incurred for the use of his personal
7 vehicle, on behalf of and in furtherance of his employment with DEFENDANT. To date,
8 DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time
9 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.
10 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
11 \$75,000

12 **J. CLASS ACTION ALLEGATIONS**

13 42. PLAINTIFF brings the First through Eighth Causes of Action as a class action
14 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
15 previously were employed by DEFENDANT in California and classified as non-exempt
16 employees (“CALIFORNIA CLASS”) during the period beginning four years prior to the filing
17 of the Complaint and ending on a date determined by the Court (“CLASS PERIOD”). The amount
18 in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five
19 million dollars (\$5,000,000.00).

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

27 49. The members of the class are so numerous that joinder of all class members is
28 impractical.

1 50. Common questions of law and fact regarding DEFENDANTS' conduct, including
2 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failing to
3 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
4 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
5 minimum wage and overtime, exist as to all members of the class and predominate over any
6 questions affecting solely any individual members of the class. Among the questions of law and
7 fact common to the class are:

- 8 a. Whether DEFENDANTS maintained legally compliant meal period policies and
9 practices;
- 10 b. Whether DEFENDANTS maintained legally compliant rest period policies and
11 practices;
- 12 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
13 CLASS Members accurate premium payments for missed meal and rest periods;
- 14 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
15 CLASS Members accurate overtime wages;
- 16 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
17 CLASS Members at least minimum wage for all hours worked;
- 18 f. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA
19 CLASS Members for required business expenses;
- 20 g. Whether DEFENDANTS issued legally compliant wage statements;
- 21 h. Whether DEFENDANTS committed an act of unfair competition by
22 systematically failing to record and pay PLAINTIFF and the other members of the
23 CALIFORNIA CLASS for all time worked;
- 24 i. Whether DEFENDANTS committed an act of unfair competition by
25 systematically failing to record all meal and rest breaks missed by PLAINTIFF
26 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed
27 the benefit of this work, required employees to perform this work and permits or
28 suffers to permit this work;

1 j. Whether DEFENDANTS committed an act of unfair competition in violation of
2 the UCL, by failing to provide the PLAINTIFF and the other members of the
3 CALIFORNIA CLASS with the legally required meal and rest periods.

4 51. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
5 a result of DEFENDANTS' conduct and actions alleged herein.

6 52. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
7 the same interests as the other members of the class.

8 53. PLAINTIFF will fairly and adequately represent and protect the interests of the
9 CALIFORNIA CLASS Members.

10 54. PLAINTIFF retained able class counsel with extensive experience in class action
11 litigation.

12 55. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
13 interests of the other CALIFORNIA CLASS Members.

14 56. There is a strong community of interest among PLAINTIFF and the members of
15 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
16 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
17 sustained.

18 57. The questions of law and fact common to the CALIFORNIA CLASS Members
19 predominate over any questions affecting only individual members, including legal and factual
20 issues relating to liability and damages.

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

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

8 59. Class treatment provides manageable judicial treatment calculated to bring an
9 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
10 the conduct of DEFENDANTS.

11 **FIRST CAUSE OF ACTION**

12 **Unlawful Business Practices**

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

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

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

18 61. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
19 Code § 17021.

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

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

1 63. By the conduct alleged herein, DEFENDANT has engaged and continues to
2 engage in a business practice which violates California law, including but not limited to, the
3 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
4 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
5 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
6 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
7 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

24 67. By the conduct alleged herein, DEFENDANT's practices were also unfair and
25 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
26 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
27 as required by Cal. Lab. Code §§ 226.7 and 512.
28

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

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

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

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

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

25 73. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
26 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
27 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
28 engaging in any unlawful and unfair business practices in the future.

1 74. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
2 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
3 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
4 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
5 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
6 and economic harm unless DEFENDANT is restrained from continuing to engage in these
7 unlawful and unfair business practices.

8 **SECOND CAUSE OF ACTION**

9 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

26 80. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
27 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
28 worked. As set forth herein, DEFENDANT'S uniform policy and practice was to unlawfully and

1 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS.

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

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

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

16 84. During the CLASS PERIOD, PLAINTIFF and the other members of the
17 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
18 failure to pay all earned wages.

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

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

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

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

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

22 **THIRD CAUSE OF ACTION**

23 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

26 96. In committing these violations of the California Labor Code, DEFENDANT
27 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
28 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal

1 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
2 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
3 regulations.

4 97. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
5 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
6 compensation for overtime worked.

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

15 99. During the CLASS PERIOD, PLAINTIFF and the other members of the
16 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
17 constituting a failure to pay all earned wages.

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

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

1 102. DEFENDANTS knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
3 DEFENDANT systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
5 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

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

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1 112. 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)**

8 113. 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.

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

- 13 a. Gross wages earned,
- 14 b. (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 c. the number of piecerate units earned and any applicable piece rate if the employee
19 is paid on a piece-rate basis,
- 20 d. all deductions, provided that all deductions made on written orders of the employee
21 may be aggregated and shown as one item,
- 22 e. net wages earned,
- 23 f. the inclusive dates of the period for which the employee is paid,
- 24 g. 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 h. the name and address of the legal entity that is the employer, and

1 i. 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.

3 115. 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. In
10 addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to
11 PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of
12 California Labor Code Section 226.

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

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

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

5 117. 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.

8 118. Cal. Lab. Code § 200 provides that:

9 As used in this article:

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

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

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

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

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

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

3 122. Cal. Lab. Code § 203 provides:

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

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

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

18 **EIGHTH CAUSE OF ACTION**

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

20 **(Cal. Lab. Code §§ 2802)**

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

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

25 126. Cal. Lab. Code § 2802 provides, in relevant part, that:

26 An employer shall indemnify his or her employee for all necessary expenditures or losses
27 incurred by the employee in direct consequence of the discharge of his or her duties, or of
28

1 his or her obedience to the directions of the employer, even though unlawful, unless the
2 employee, at the time of obeying the directions, believed them to be unlawful

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

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

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

3 133. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANTS (a) failed to pay AGGRIEVED EMPLOYEES
5 minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally
6 required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct
7 regular rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, and (e)
8 failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor
9 Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,
10 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1,
11 1197.14, 1198, 1198.5, 1199, 2802, 2804, and the applicable Industrial Wage Order(s), and
12 thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks
13 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
14 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
15 and the other AGGRIEVED EMPLOYEES.

16
17 **PRAYER FOR RELIEF**

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

20 1. On behalf of the CALIFORNIA CLASS:

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

1 for restitution of the sums incidental to DEFENDANT's violations due to
2 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

3 2. On behalf of the CALIFORNIA CLASS:

- 4 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
5 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
6 to Cal. Code of Civ. Proc. § 382;
- 7 b. Compensatory damages, according to proof at trial, including compensatory
8 damages for overtime compensation and separately owed rest periods, due to
9 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
10 applicable CLASS PERIOD plus interest thereon at the statutory rate;
- 11 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
12 the applicable IWC Wage Order;
- 13 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
14 which a violation occurs and one hundred dollars (\$100) per each member of the
15 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
16 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
17 violation of Cal. Lab. Code § 226
- 18 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
19 penalty from the due date thereof at the same rate until paid or until an action
20 therefore is commenced, in accordance with Cal. Lab. Code § 203.

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

24 4. On all claims:

- 25 a. An award of interest, including prejudgment interest at the legal rate;
- 26 b. Such other and further relief as the Court deems just and equitable; and
- 27 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
- 28

1 DATED: November 4, 2022

ZAKAY LAW GROUP, APLC

2

By: 

3

Shani O. Zakay
Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

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8 DATED: November 4, 2022

ZAKAY LAW GROUP, APLC

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By: 

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Shani O. Zakay
Attorney for PLAINTIFF

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EXHIBIT 1

August 29, 2022

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

TRANSFORM PARTNERS LLC

c/o Ozgur Gorur
12113 Kirkham Road
Poway, CA 92064

Sent via Certified Mail and Return Receipt 7021 1970 0001 8870 1057

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 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 MIGUEL MONTOYA (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant TRANSFORM PARTNERS LLC (“Defendant”). Plaintiff was employed by Defendant in California from January of 2018 to February of 2022, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all their time worked, and for all their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence, Plaintiff contends that Defendant 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 Defendant’s 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, 1198.5, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant 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 Defendant, is attached hereto. This

information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant 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 Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General 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 MIGUEL MONTOYA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MIGUEL MONTOYA, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

TRANSFORM PARTNERS LLC, a California
limited liability company; 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 MIGUEL MONTOYA (“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 TRANSFORM PARTNERS LLC (“DEFENDANT”) is a California 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 is a retailer of office equipment in the State of California, including in the County of San Diego, where PLAINTIFF worked.

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

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

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

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

20 7. PLAINTIFF was employed by DEFENDANTS in from January of 2018 to
21 February of 2022 and was at all times classified by DEFENDANT as a non-exempt employee,
22 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
23 minimum and overtime wages due for all time worked.

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

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

14 10. DEFENDANTS’ uniform policies and practices alleged herein were unlawful,
15 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain
16 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

22 **JURISDICTION AND VENUE**

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

27 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and

1 DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities
2 in this County and/or conduct substantial business in this County, and (ii) committed the wrongful
3 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

4 **THE CONDUCT**

5 14. In violation of the applicable sections of the California Labor Code and the
6 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
7 matter of company policy, practice and procedure, intentionally, knowingly and systematically
8 failed to provide legally compliant meal and rest periods, failed to accurately compensate
9 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
10 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
11 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to compensate
12 PLAINTIFF and other members of the CALIFORNIA CLASS meal rest premiums at the regular
13 rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business
14 expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with
15 accurate itemized wage statements showing, among other things, all applicable hourly rates in
16 effect during the pay periods and the corresponding amount of time worked at each hourly rate.
17 DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate
18 and full payment for all time worked as required by California law which allows DEFENDANTS
19 to illegally profit and gain an unfair advantage over competitors who comply with the law. To
20 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
21 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

22 **A. Meal Period Violations**

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

1 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
2 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
3 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work
4 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.
5 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. More
6 specifically, from time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
7 required by DEFENDANTS to work through their meal breaks in order to meet DEFENDANTS'
8 prescribed labor hours to perform all the tasks required of them by DEFENDANTS. PLAINTIFF
9 and other CALIFORNIA CLASS Members were required to perform work-related tasks.
10 Additionally, PLAINTIFF and other CALIFORNIA CLASS Members were required to perform
11 as much work as possible and as quickly as possible in order to meet DEFENDANTS' strict
12 performance and production requirements. As a result, the PLAINTIFF and other CALIFORNIA
13 CLASS Members forfeited minimum wage and overtime wages by regularly working without
14 their time being accurately recorded and without compensation at the applicable minimum wage
15 and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and
16 other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS'
17 business records.

18 16. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
19 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
20 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
21 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
22 other CALIFORNIA CLASS Members were required from time to time to perform work as
23 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
24 meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
25 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
26 these employees were required by DEFENDANTS to work ten (10) hours of work from time to
27 time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS
28 Members does not qualify for limited and narrowly construed "on-duty" meal period exception.

1 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS
2 Members were, from time to time, required to remain on duty and on call. PLAINTIFF and other
3 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
4 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

5 **B. Rest Period Violations**

6 17. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
7 CALIFORNIA CLASS members were also required from time to time to work in excess of four
8 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
9 requirements and DEFENDANTS' inadequate staffing. More specifically, from time to time,
10 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to
11 work through their rest breaks in order to meet DEFENDANTS' prescribed labor hours to perform
12 all the tasks required of them by DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS
13 Members were required to perform work-related tasks. Additionally, PLAINTIFF and other
14 CALIFORNIA CLASS Members were required to perform as much work as possible and as
15 quickly as possible in order to meet DEFENDANTS' strict performance and production
16 requirements. Further, for the same reasons these employees were denied their first rest periods
17 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time
18 to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between
19 six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
20 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they
21 were provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were,
22 from time to time, required to remain on duty and/or on call. PLAINTIFF and other
23 CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As
24 a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF
25 and other CALIFORNIA CLASS Members were from time to time denied their proper rest
26 periods by DEFENDANTS and DEFENDANTS' managers.

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

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

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

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

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

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

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

23 **D. Unreimbursed Business Expenses**

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

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

7 24. In the course of their employment, DEFENDANTS required PLAINTIFF and
8 other CALIFORNIA CLASS Members to use their personal vehicles as a result of and in
9 furtherance of their job duties as employees for DEFENDANT. But for the use of their own
10 personal vehicles, PLAINTIFF and the CALIFORNIA CLASS Members could not complete their
11 essential job duties, including but not limited to, driving between warehouses to transport
12 products. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other
13 CALIFORNIA CLASS Members for their use of their personal vehicles. As a result, in the course
14 of their employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS
15 Members incurred unreimbursed business expenses, but were not limited to, costs related to the
16 use of their personal vehicles, all on behalf of and for the benefit of DEFENDANT.

17 **E. Wage Statement Violations**

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

26 26. From time to time during the CLASS PERIOD, when PLAINTIFF and other
27 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
28 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed

1 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
2 wage statements which failed to show, among other things, the total hours worked and all
3 applicable hourly rates in effect during the pay period and the corresponding amount of time
4 worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest
5 periods.

6 27. In addition to the violations described above, DEFENDANTS, from time to time,
7 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
8 that comply with Cal. Lab. Code § 226.

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

13 **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

14 29. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
15 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
16 meaning the time during which an employee is subject to the control of an employer, including all
17 the time the employee is suffered or permitted to work. From time to time, DEFENDANTS required
18 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
19 they were under DEFENDANTS' control. Specifically, PLAINTIFF performed work off the clock
20 during what was supposed to be his off-duty meal period, spending time under the DEFENDANTS'
21 control for which he was not compensated. More specifically, from time to time, PLAINTIFF and
22 other CALIFORNIA CLASS Members were required by DEFENDANTS to perform work off-the-
23 clock during what was supposed to be their off-duty meal periods in order to meet DEFENDANTS'
24 prescribed labor hours to perform all the tasks required of them by DEFENDANTS.

25 30. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
26 minimum wage and overtime compensation by regularly working without their time being
27 accurately recorded and without compensation at the applicable minimum wage and overtime rates.
28 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS

1 necessary wages for attending for performing work at DEFENDANTS' direction, request and
2 benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF
3 and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS'
4 business records.

5 31. DEFENDANTS directed and directly benefited from the uncompensated off-the-
6 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

7 32. DEFENDANTS controlled the work schedules, duties, protocols, applications,
8 assignments, and employment conditions of PLAINTIFF and the other members of the
9 CALIFORNIA CLASS.

10 33. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
11 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
12 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
13 wages earned and owed for all the work they performed, including but not limited to, meal period
14 off-the-clock work.

15 34. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
16 exempt employees, subject to the requirements of the California Labor Code.

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

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

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

1 **G. Failure to Provide Wages When Due**

2 38. Pursuant to Cal. Lab. Code § 203, “If an employer willfully fails to pay, without
3 abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
4 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
5 from the due date thereof at the same rate until paid or until an action therefor is commenced; but
6 the wages shall not continue for more than 30 days.” DEFENDANT from time to time failed to
7 timely pay PLAINTIFF and CALIFORNIA CLASS Members their final wages in accordance
8 with Cal. Lab. Code §§ 201 and 202. As a result, PLAINTIFF and those CALIFORNIA CLASS
9 Members’ whose employment have ended are entitled to waiting time penalties pursuant to Cal.
10 Lab. Code § 203.

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

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

17 **I. Unlawful Deductions**

18 40. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
19 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
20 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
21 DEFENDANTS violated Labor Code § 221.

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

1 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was
2 supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
3 without additional compensation and in accordance with DEFENDANT’S strict corporate policy
4 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
5 comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF
6 for required business expenses related to the personal expenses incurred for the use of his personal
7 vehicle, on behalf of and in furtherance of his employment with DEFENDANT. To date,
8 DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time
9 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.
10 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
11 \$75,000

12 **J. CLASS ACTION ALLEGATIONS**

13 42. PLAINTIFF brings the First through Eighth Causes of Action as a class action
14 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
15 previously were employed by DEFENDANT in California and classified as non-exempt
16 employees (“CALIFORNIA CLASS”) during the period beginning four years prior to the filing
17 of the Complaint and ending on a date determined by the Court (“CLASS PERIOD”). The amount
18 in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five
19 million dollars (\$5,000,000.00).

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

27 49. The members of the class are so numerous that joinder of all class members is
28 impractical.

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

- 8 a. Whether DEFENDANTS maintained legally compliant meal period policies and
9 practices;
- 10 b. Whether DEFENDANTS maintained legally compliant rest period policies and
11 practices;
- 12 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
13 CLASS Members accurate premium payments for missed meal and rest periods;
- 14 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
15 CLASS Members accurate overtime wages;
- 16 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
17 CLASS Members at least minimum wage for all hours worked;
- 18 f. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA
19 CLASS Members for required business expenses;
- 20 g. Whether DEFENDANTS issued legally compliant wage statements;
- 21 h. Whether DEFENDANTS committed an act of unfair competition by
22 systematically failing to record and pay PLAINTIFF and the other members of the
23 CALIFORNIA CLASS for all time worked;
- 24 i. Whether DEFENDANTS committed an act of unfair competition by
25 systematically failing to record all meal and rest breaks missed by PLAINTIFF
26 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed
27 the benefit of this work, required employees to perform this work and permits or
28 suffers to permit this work;

1 j. Whether DEFENDANTS committed an act of unfair competition in violation of
2 the UCL, by failing to provide the PLAINTIFF and the other members of the
3 CALIFORNIA CLASS with the legally required meal and rest periods.

4 51. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
5 a result of DEFENDANTS' conduct and actions alleged herein.

6 52. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
7 the same interests as the other members of the class.

8 53. PLAINTIFF will fairly and adequately represent and protect the interests of the
9 CALIFORNIA CLASS Members.

10 54. PLAINTIFF retained able class counsel with extensive experience in class action
11 litigation.

12 55. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
13 interests of the other CALIFORNIA CLASS Members.

14 56. There is a strong community of interest among PLAINTIFF and the members of
15 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
16 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
17 sustained.

18 57. The questions of law and fact common to the CALIFORNIA CLASS Members
19 predominate over any questions affecting only individual members, including legal and factual
20 issues relating to liability and damages.

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

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

8 59. Class treatment provides manageable judicial treatment calculated to bring an
9 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
10 the conduct of DEFENDANTS.

11 **FIRST CAUSE OF ACTION**

12 **Unlawful Business Practices**

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

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

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

18 61. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
19 Code § 17021.

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

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

1 63. By the conduct alleged herein, DEFENDANT has engaged and continues to
2 engage in a business practice which violates California law, including but not limited to, the
3 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
4 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
5 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
6 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
7 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

24 67. By the conduct alleged herein, DEFENDANT's practices were also unfair and
25 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
26 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
27 as required by Cal. Lab. Code §§ 226.7 and 512.
28

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

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

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

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

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

25 73. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
26 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
27 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
28 engaging in any unlawful and unfair business practices in the future.

1 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS.

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

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

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

16 84. During the CLASS PERIOD, PLAINTIFF and the other members of the
17 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
18 failure to pay all earned wages.

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

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

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

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

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

22 **THIRD CAUSE OF ACTION**

23 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

26 96. In committing these violations of the California Labor Code, DEFENDANT
27 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
28 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal

1 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
2 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
3 regulations.

4 97. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
5 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
6 compensation for overtime worked.

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

15 99. During the CLASS PERIOD, PLAINTIFF and the other members of the
16 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
17 constituting a failure to pay all earned wages.

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

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

1 102. DEFENDANTS knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
3 DEFENDANT systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
5 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

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

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1 112. 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)**

8 113. 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.

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

- 13 a. Gross wages earned,
- 14 b. (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 c. the number of piecerate units earned and any applicable piece rate if the employee
19 is paid on a piece-rate basis,
- 20 d. all deductions, provided that all deductions made on written orders of the employee
21 may be aggregated and shown as one item,
- 22 e. net wages earned,
- 23 f. the inclusive dates of the period for which the employee is paid,
- 24 g. 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 h. the name and address of the legal entity that is the employer, and

1 i. 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.

3 115. 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. In
10 addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to
11 PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of
12 California Labor Code Section 226.

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

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

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

5 117. 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.

8 118. Cal. Lab. Code § 200 provides that:

9 As used in this article:

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

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

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

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

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

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

3 122. Cal. Lab. Code § 203 provides:

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

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

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

18 **EIGHTH CAUSE OF ACTION**

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

20 **(Cal. Lab. Code §§ 2802)**

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

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

25 126. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

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

24 **PRAYER FOR RELIEF**

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

- 27 1. On behalf of the CALIFORNIA CLASS:
28 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA

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

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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: August 30, 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: August 30, 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:

Transform Partners LLC
 c/o Ozgur Boruv
 12113 Kirkham Rd
 Poway, CA 92064



9590 9402 7020 1225 2861 57

2. Article Number (Transfer from service label)

7021 1970 0001 8870 1057

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Odin Lightle

- Agent
- Addressee

B. Received by (Printed Name)

Odin Lightle

C. Date of Delivery

08/01/22

D. Is delivery address different from item 1? If YES, enter delivery address below:

- Yes
- No

8/29/22 Montaza 002-345

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
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- Collect on Delivery Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery
- Restricted Delivery