

**SUMMONS  
(CITACION JUDICIAL)**

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

TRICOM NETWORKS, INC., a California Corporation; and DOES 1-50, Inclusive,

**ELECTRONICALLY FILED**

Superior Court of California,  
County of San Diego

**01/10/2023** at 12:22:27 PM

Clerk of the Superior Court  
By Brenda Ramirez, Deputy Clerk

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

COLEMAN BUD MATHEWS IV, an individual, on behalf of himself, and on behalf of all persons similarly situated,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court - Hall of Justice Courthouse  
330 West Broadway  
San Diego, CA 92101

CASE NUMBER:

(Número del Caso): 37-2023-00001267-CU-DE-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. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203  
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 01/11/2023  
(Fecha)

Clerk, by \_\_\_\_\_, Deputy  
(Secretario) *B. Ramirez* (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

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



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County of San Diego  
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By Brenda Ramirez, Deputy Clerk

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Attorneys for PLAINTIFF

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

COLEMAN BUD MATHEWS IV, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiffs,

v.

TRICOM NETWORKS, INC., a California Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: 37-2023-00001267-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 REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ

**DEMAND FOR A JURY TRIAL**

PLAINTIFF COLEMAN BUD MATHEWS IV (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees, allege on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

**PRELIMINARY ALLEGATIONS**

1. Defendant TRICOM NETWORKS, INC. (“DEFENDANT” and/or “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANT owns and operates a construction business in California.

3. PLAINTIFF was employed by DEFENDANT in California from December of 2021 to May of 2022 as a non-exempt employee, paid in part an hourly basis and non-discretionary bonuses, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all persons who are or previously were employed by DEFENDANT and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the

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

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

1 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the  
2 Defendants' agents, servants and/or employees.

3 8. DEFENDANT was PLAINTIFF'S employer or persons acting on behalf of the  
4 PLAINTIFF'S employer, within the meaning of California Labor Code § 558, who violated or  
5 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision  
6 regulating hours and days of work in any order of the Industrial Welfare Commission and, as  
7 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,  
8 at all relevant times.

9 9. DEFENDANT was PLAINTIFF'S employer or persons acting on behalf of  
10 PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person,  
11 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any  
12 employee a wage less than the minimum fixed by California state law, and as such, are subject to  
13 civil penalties for each underpaid employee.

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

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

## 22 **JURISDICTION AND VENUE**

23 12. This Court 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 DEFENDANT operates in locations across California, employs

1 the CALIFORNIA CLASS across California, including in this County, and committed the  
2 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

3 **THE CONDUCT**

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

22 **A. Meal Period Violations**

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

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

9         16. From time to time during the CLASS PERIOD, as a result of their rigorous work  
10 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other  
11 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty  
12 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other  
13 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for  
14 more than five (5) hours during some shifts without receiving a meal break. Further,  
15 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second  
16 off-duty meal period for some workdays in which these employees are required by DEFENDANT  
17 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other  
18 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed "on-  
19 duty" meal period exception. When they were provided with meal periods, PLAINTIFF and other  
20 CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call.  
21 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with  
22 legally required meal breaks is evidenced by DEFENDANT's business records. PLAINTIFF and  
23 other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional  
24 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

25         **B. Rest Period Violations**

26         17. From time to time during the CLASS PERIOD, PLAINTIFF and other  
27 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without  
28 being provided ten (10) minute rest periods as a result of their rigorous work requirements and

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

12 **C. Unreimbursed Business Expenses**

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

24 19. In the course of their employment, DEFENDANT required PLAINTIFF and other  
25 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal vehicles  
26 as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other  
27 CALIFORNIA CLASS Members were required to use their vehicles in order to drive between  
28 job sites. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other



1 CALIFORNIA CLASS Members for the use of their personal vehicles. As a result, in the course  
2 of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS  
3 Members incurred unreimbursed business expenses that included, but were not limited to, costs  
4 related to the use of their personal vehicles, all on behalf of and for the benefit of DEFENDANT.

5 **D. Wage Statement Violations**

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

14 21. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
15 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for  
16 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also  
17 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and  
18 accurate wage statements which failed to show, among other things, all deductions, the total hours  
19 worked and all applicable hourly rates in effect during the pay period, and the corresponding  
20 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed  
21 meal and rest periods.

22 22. In addition to the foregoing, DEFENDANT, from time to time, failed to provide  
23 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with  
24 Cal. Lab. Code § 226.

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

1 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

2 24. During the CLASS PERIOD, from time-to-time DEFENDANT failed and  
3 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS  
4 for all hours worked.

5 25. During the CLASS PERIOD, from time-to-time DEFENDANT required  
6 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift  
7 work, including but not limited to the time spent booting up computer systems prior to being able  
8 to clock in for shifts. This resulted in PLAINTIFF and other members of the CALIFORNIA  
9 CLASS to have to work while off-the-clock.

10 26. DEFENDANT directed and directly benefited from the undercompensated off-the-  
11 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

12 27. DEFENDANT controlled the work schedules, duties, and protocols, applications,  
13 assignments, and employment conditions of PLAINTIFF and the other members of the  
14 CALIFORNIA CLASS.

15 28. DEFENDANT was able to track the amount of time PLAINTIFF and the other  
16 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to  
17 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all  
18 wages earned and owed for all the work they performed.

19 29. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-  
20 exempt employees, subject to the requirements of the California Labor Code.

21 30. DEFENDANT's policies and practices deprived PLAINTIFF and the other  
22 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed  
23 for the off-the-clock work activities. Because PLAINTIFF and the other members of the  
24 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than  
25 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime  
26 pay.

27 31. DEFENDANT knew or should have known that PLAINTIFF and the other  
28 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

1           32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
2 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and  
3 benefit for the time spent working while off-the-clock. DEFENDANT's uniform policy and  
4 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all  
5 hours worked in accordance with applicable law is evidenced by DEFENDANT's business  
6 records.

7           **F. Unlawful Rounding Practices**

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

20           34. Further, the mutability of DEFENDANTS' timekeeping system and unlawful  
21 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'  
22 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful  
23 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to  
24 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without  
25 receiving an off-duty meal break.

26           **G. Timekeeping Manipulation**

27           35. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an  
28 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of

1 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the  
2 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal  
3 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally  
4 alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and other  
5 members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours  
6 worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed  
7 rest break.

8         36. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from  
9 time-to-time, forfeited time worked by working without their time being accurately recorded and  
10 without compensation at the applicable pay rates.

11         37. The mutability of the timekeeping system also allowed DEFENDANTS to alter  
12 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'  
13 timekeeping system so as to create the appearance that PLAINTIFF and other members of the  
14 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees  
15 were not at all times provided an off-duty meal break. This practice is a direct result of  
16 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)  
17 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

18         38. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
19 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit  
20 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and  
21 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all  
22 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business  
23 records.

24         **H. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**  
25         **and Redeemed Sick Pay**

26         39. From time to time during the CLASS PERIOD, DEFENDANT failed and  
27 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS  
28 Members for their overtime and double time hours worked, meal and rest period premiums, and

1 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members  
2 forfeited wages due to them for working overtime without compensation at the correct overtime  
3 and double time rates, meal and rest period premiums, and redeemed sick pay rates.  
4 DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at  
5 the correct rate for all overtime and double time worked, meal and rest period premiums, and  
6 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT's business  
7 records.

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

12 41. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
13 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid  
14 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for  
15 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly  
16 basis with bonus compensation when the employees met the various performance goals set by  
17 DEFENDANTS.

18 42. However, from-time-to-time, when calculating the regular rate of pay, in those pay  
19 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double  
20 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-  
21 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus  
22 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked  
23 rather than just all non-overtime hours worked. Management and supervisors described the  
24 incentive/bonus program to potential and new employees as part of the compensation package.  
25 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA  
26 CLASS members must be included in the "regular rate of pay." The failure to do so has resulted  
27 in a systematic underpayment of overtime and double time compensation, meal and rest period  
28 premiums, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS members by

1 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time  
2 for non-employees shall be calculated in the same manner as the regular rate of pay for the  
3 workweek in which the non-exempt employee uses paid sick time, whether or not the employee  
4 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by  
5 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of  
6 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is  
7 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

19 **I. Violations for Untimely Payment of Wages**

20 44. Pursuant to California Labor Code section 204, PLAINTIFF and the  
21 CALIFORNIA CLASS members were entitled to timely payment of wages during their  
22 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not  
23 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,  
24 meal period premium wages, and rest period premium wages within permissible time period.

25 **J. Unlawful Deductions**

26 45. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF  
27 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do  
28

1 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,  
2 DEFENDANTS violated Labor Code § 221.

3 46. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take  
4 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.  
5 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)  
6 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to  
7 provide PLAINTIFF with a second off-duty meal period each workday in which he was required  
8 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF  
9 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.  
10 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was  
11 supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks  
12 without additional compensation and in accordance with DEFENDANT’S strict corporate policy  
13 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to  
14 comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse PLAINTIFF for  
15 the use of his personal vehicle in violation of Cal. Lab. Code § 2802. To date, DEFENDANT has  
16 not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to  
17 him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy  
18 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

19 **CLASS ACTION ALLEGATIONS**

20 47. PLAINTIFF bring this Class Action on behalf of himself, and a California class  
21 defined as all persons who are or previously were employed by DEFENDANT in California and  
22 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period  
23 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined  
24 by the Court (the “CLASS PERIOD”).

25 48. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been  
26 deprived of wages and penalties from unpaid wages earned and due, including but not limited to  
27 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,  
28 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate

1 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain  
2 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

3 49. The members of the class are so numerous that joinder of all class members is  
4 impractical.

5 50. Common questions of law and fact regarding DEFENDANT's conduct, including  
6 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately  
7 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the  
8 regular rate of compensation for missed meal and rest period premiums, failing to provide legally  
9 compliant meal and rest periods, failure to provide accurate itemized wage statements accurate,  
10 and failure to ensure they are paid at least minimum wage and overtime, exist as to all members  
11 of the class and predominate over any questions affecting solely any individual members of the  
12 class. Among the questions of law and fact common to the class are:

- 13 a. Whether DEFENDANT maintained legally compliant meal period policies and  
14 practices;
- 15 b. Whether DEFENDANT maintained legally compliant rest period policies and  
16 practices;
- 17 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
18 Members accurate premium payments for missed meal and rest periods;
- 19 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
20 Members accurate overtime wages;
- 21 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
22 Members at least minimum wage for all hours worked;
- 23 f. Whether DEFENDANT issued legally compliant wage statements;
- 24 g. Whether DEFENDANT committed an act of unfair competition by systematically  
25 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA  
26 CLASS for all time worked;
- 27 h. Whether DEFENDANT committed an act of unfair competition by systematically  
28 failing to record all meal and rest breaks missed by PLAINTIFF and other



1 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit  
2 of this work, required employees to perform this work and permits or suffers to  
3 permit this work;

4 i. Whether DEFENDANT committed an act of unfair competition in violation of the  
5 UCL, by failing to provide the PLAINTIFF and the other members of the  
6 CALIFORNIA CLASS with the legally required meal and rest periods.

7 51. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as  
8 a result of DEFENDANT's conduct and actions alleged herein.

9 52. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and  
10 PLAINTIFF have the same interests as the other members of the class.

11 53. PLAINTIFF will fairly and adequately represent and protect the interests of the  
12 CALIFORNIA CLASS Members.

13 54. PLAINTIFF retained able class counsel with extensive experience in class action  
14 litigation.

15 55. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the  
16 interest of the other CALIFORNIA CLASS Members.

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

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

24 58. A class action is superior to other available methods for the fair and efficient  
25 adjudication of this controversy because joinder of all class members is impractical. Moreover,  
26 since the damages suffered by individual members of the class may be relatively small, the  
27 expense and burden of individual litigation makes it practically impossible for the members of the  
28 class individually to redress the wrongs done to them. Without class certification and

1 determination of declaratory, injunctive, statutory, and other legal questions within the class  
2 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will  
3 create the risk of:

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

11 59. Class treatment provides manageable judicial treatment calculated to bring an  
12 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of  
13 the conduct of DEFENDANT.

14 **FIRST CAUSE OF ACTION**

15 **Unlawful Business Practices**

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

17 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

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

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

1 competition, as defined in this chapter, or as may be necessary to restore to any person in  
2 interest any money or property, real or personal, which may have been acquired by means  
of such unfair competition. (Cal. Bus. & Prof. Code § 17203).

3 63. By the conduct alleged herein, DEFENDANT has engaged and continues to  
4 engage in a business practice which violates California law, including but not limited to, the  
5 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
6 including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198,  
7 and 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.  
8 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
9 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

24 66. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
25 unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the  
26 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
27 DEFENDANT.  
28

1           67. By the conduct alleged herein, DEFENDANT's practices were also unfair and  
2 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide  
3 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as  
4 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

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

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

12 **SECOND CAUSE OF ACTION**

13 **Failure To Pay Minimum Wages**

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

15 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

19 76. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for  
20 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial  
21 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay  
22 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

28

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

3           80. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the  
4 other members of the CALIFORNIA CLASS without regard to the correct amount of time they  
5 work. As set forth herein, DEFENDANT’s uniform policy and practice was to unlawfully and  
6 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the  
7 CALIFORNIA CLASS.

8           81. DEFENDANT’s uniform pattern of unlawful wage and hour practices manifested,  
9 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
10 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF  
11 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

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

24           85. 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 the true  
26 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have  
27 suffered and will continue to suffer an economic injury in amounts which are presently unknown  
28 to them, and which will be ascertained according to proof at trial.

1           86. DEFENDANT knew or should have known that PLAINTIFF and the other  
2 members of the CALIFORNIA CLASS were under-compensated for their time 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 the correct minimum wages  
7 for their time worked.

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

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

**THIRD CAUSE OF ACTION**  
**Failure To Pay Overtime Compensation**

1 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

2 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

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

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

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

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

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

23 95. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
24 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
25 implementing a uniform policy and practice that failed to accurately record overtime worked by  
26 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to  
27 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,  
28



1 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve  
2 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

9 97. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
10 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
11 overtime compensation for their time worked for DEFENDANT.

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

20 99. During the CLASS PERIOD, PLAINTIFF and the other members of the  
21 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting  
22 a failure to pay all earned wages.

23 100. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the  
24 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the  
25 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even  
26 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required  
27 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANT  
28

1 failed to accurately record and pay as evidenced by DEFENDANT's business records and  
2 witnessed by employees.

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

8 102. DEFENDANT knew or should have known that PLAINTIFF and the other  
9 members of the CALIFORNIA CLASS were undercompensated for their time worked.  
10 DEFENDANT systematically elected, either through intentional malfeasance or gross  
11 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and  
12 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF  
13 and the other members of the CALIFORNIA CLASS the correct overtime wages for their  
14 overtime worked.

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

23 104. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS  
24 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the  
25 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the  
26 California Labor Code and/or other applicable statutes. To the extent overtime compensation is  
27 determined to be owed to the CALIFORNIA CLASS Members who have terminated their  
28 employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and therefore

1 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which  
2 penalties are sought herein. DEFENDANT’s conduct as alleged herein was willful, intentional,  
3 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are  
4 entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

8 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

26 107. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
27 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members  
28 who were not provided a meal period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday that a  
2 meal period was not provided.

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

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

9 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

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

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

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

7 **SIXTH CAUSE OF ACTION**

8 **Failure To Reimburse Employees for Required Expenses**

9 **(Cal. Lab. Code §§ 2802)**

10 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

14 114. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

20 115. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.  
21 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS  
22 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
23 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members  
24 for expenses which included, but were not limited to, personal expenses incurred for the use of  
25 their personal vehicles all on behalf of and for the benefit of DEFENDANT. Specifically,  
26 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use  
27 their personal vehicles to execute their essential job duties on behalf of DEFENDANT.  
28 DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and  
the CALIFORNIA CLASS members for expenses resulting from the use of their personal vehicles  
for DEFENDANT within the course and scope of their employment for DEFENDANT. These

1 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by  
2 DEFENDANT’s conduct to assert any waiver of this expectation. Although these expenses were  
3 necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,  
4 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS  
5 members for these expenses as an employer is required to do under the laws and regulations of  
6 California.

7 116. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred  
8 by him and the CALIFORNIA CLASS members in the discharge of their job duties for  
9 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory  
10 rate and costs under Cal. Lab. Code § 2802.

11 **SEVENTH CAUSE OF ACTION**

12 **Failure To Provide Accurate Itemized Statements**

13 **(Cal. Lab. Code § 226)**

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

15 117. 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.

18 118. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
19 “accurate itemized” statement in writing showing:

- 20 a. Gross wages earned,
- 21 b. (2) total hours worked by the employee, except for any employee whose  
22 compensation is solely based on a salary and who is exempt from payment of  
23 overtime under subdivision (a) of Section 515 or any applicable order of the  
24 Industrial Welfare Commission,
- 25 c. the number of piece-rate units earned and any applicable piece rate if the employee  
26 is paid on a piece-rate basis,
- 27 d. all deductions, provided that all deductions made on written orders of the employee  
28 may be aggregated and shown as one item,

- 1 e. net wages earned,
- 2 f. the inclusive dates of the period for which the employee is paid,
- 3 g. the name of the employee and his or her social security number, except that by
- 4 January 1, 2008, only the last four digits of his or her social security number of an
- 5 employee identification number other than social security number may be shown
- 6 on the itemized statement,
- 7 h. the name and address of the legal entity that is the employer, and
- 8 i. all applicable hourly rates in effect during the pay period and the corresponding
- 9 number of hours worked at each hourly rate by the employee.

10 119. When DEFENDANT did not accurately record PLAINTIFF'S and other  
11 CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed  
12 meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal.  
13 Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA  
14 CLASS Members with complete and accurate wage statements which failed to show, among other  
15 things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked  
16 and all applicable hourly rates in effect during the pay period and the corresponding amount of  
17 time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal  
18 and rest periods.

19 120. In addition to the foregoing, DEFENDANT failed to provide itemized wage  
20 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the  
21 requirements of California Labor Code Section 226.

22 121. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code  
23 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA  
24 CLASS. These damages include, but are not limited to, costs expended calculating the correct  
25 wages for all missed meal and rest breaks and the amount of employment taxes which were not  
26 properly paid to state and federal tax authorities. These damages are difficult to estimate.  
27 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover  
28 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation

1 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period  
2 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no  
3 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member  
4 of the CALIFORNIA CLASS herein).

5 **EIGHTH CAUSE OF ACTION**

6 **Failure To Pay Wages When Due**

7 **(Cal. Lab. Code § 203)**

8 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

12 123. Cal. Lab. Code § 200 provides that:

13 As used in this article:

- 14 (d) "Wages" includes all amounts for labor performed by employees of every  
15 description, whether the amount is fixed or ascertained by the standard of time,  
16 task, piece, Commission basis, or other method of calculation.  
17 (e) "Labor" includes labor, work, or service whether rendered or performed under  
18 contract, subcontract, partnership, station plan, or other agreement if the to be  
19 paid for is performed personally by the person demanding payment.

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

23 125. Cal. Lab. Code § 202 provides, in relevant part, that:

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

126. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS  
Members' employment contract.



1 127. Cal. Lab. Code § 203 provides:

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

5 128. The employment of PLAINTIFF and many CALIFORNIA CLASS Members  
6 terminated, and DEFENDANT has not tendered payment of wages to these employees who  
7 missed meal and rest breaks, as required by law.

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

13 **NINTH CAUSE OF ACTION**

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

15 **(Cal. Lab. Code §§2698 et seq.)**

16 **(Alleged by PLAINTIFF against all Defendants)**

17 130. PLAINTIFF realleges and incorporates by this reference, as though fully set forth  
18 herein, the prior paragraphs of this Complaint.

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

1           132. PLAINTIFF, and such persons that may be added from time to time who satisfy  
2 the requirements and exhaust the administrative procedures under the Private Attorney General  
3 Act, bring this Representative Action on behalf of the State of California with respect to himself  
4 and all employees who worked for Defendant in California during the time period of November  
5 1, 2021 until the present (the "AGGRIEVED EMPLOYEES").

6           133. On November 1, 2022, PLAINTIFF gave written notice by certified mail to the  
7 Labor and Workforce Development Agency (the "Agency") and the employer of the specific  
8 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See  
9 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting  
10 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant  
11 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA  
12 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED  
13 EMPLOYEES as herein defined.

14           134. The policies, acts and practices heretofore described were and are an unlawful  
15 business act or practice because DEFENDANTS (a) failed to pay AGGRIEVED EMPLOYEES  
16 minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally  
17 required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct  
18 regular rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, and (e)  
19 failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor  
20 Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,  
21 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1,  
22 1197.14, 1198, 1198.5, 1199, 2802, 2804, and the applicable Industrial Wage Order(s), and  
23 thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks  
24 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004  
25 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF  
26 and the other AGGRIEVED EMPLOYEES.

**PRAYER FOR RELIEF**

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

1. On behalf of the CALIFORNIA CLASS:

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

2. On behalf of the CALIFORNIA CLASS:

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

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violation of Cal. Lab. Code § 226

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

f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.


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

4. On all claims:

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

DATED: January 6, 2023

**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: January 6, 2023

**ZAKAY LAW GROUP, APLC**

By:   
\_\_\_\_\_  
Shani O. Zakay  
Attorney for PLAINTIFF

# **EXHIBIT 1**



Client # 55401

November 1, 2022

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

**TRICOM NETWORKS, INC.**

c/o Dana Fang  
Jenny Countz  
2520 Venture Oaks Way, Ste 120  
Sacramento, CA 95833

*Via Certified Mail and Return Receipt No. 7022 2410 0001 4932 6687*

**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 COLEMAN BUD MATHEWS IV (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant TRICOM NETWORKS, INC. (“Defendant”). Plaintiff was employed by Defendant in California from December of 2021 to May 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.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay  
Attorney for Plaintiff

**ZAKAY LAW GROUP, APLC**

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Attorneys for PLAINTIFF

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

COLEMAN BUD MATHEWS IV, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiffs,

v.

TRICOM NETWORKS, INC., a California Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No:

**CLASS ACTION COMPLAINT FOR:**

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



1 THE APPLICABLE IWC WAGE  
2 ORDER;

3 6) FAILURE TO REIMBURSE  
4 EMPLOYEES FOR REQUIRED  
5 EXPENSES IN VIOLATION OF CAL.  
6 LAB. CODE § 2802;

7 7) FAILURE TO PROVIDE WAGES WHEN  
8 DUE IN VIOLATION OF CAL. LAB.  
9 CODE §§ 201, 202 AND 203;

10 8) FAILURE TO PROVIDE ACCURATE  
11 ITEMIZED STATEMENTS IN  
12 VIOLATION OF CAL. LAB. CODE §  
13 226;

14 9) RETALIATION IN VIOLATION OF  
15 CAL. LAB. CODE § 1102.5.;

16 10) CONSTRUCTIVE DISCHARGE IN  
17 VIOLATION OF PUBLIC POLICY.

18 **DEMAND FOR A JURY TRIAL**

19 PLAINTIFF COLEMAN BUD MATHEWS IV (“PLAINTIFF”), an individual,  
20 on behalf of himself and all other similarly situated current and former employees, allege on  
21 information and belief, except for his own acts and knowledge which are based on personal  
22 knowledge, the following:

23 **PRELIMINARY ALLEGATIONS**

24 1. Defendant TRICOM NETWORKS, INC. (“DEFENDANT” and/or  
25 “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein  
26 conducted and continues to conduct substantial and regular business throughout California.

27 2. DEFENDANT owns and operates a construction business in California.

28 3. PLAINTIFF was employed by DEFENDANT in California from December of  
2021 to May of 2022 as a non-exempt employee, paid in part an hourly basis and non-  
discretionary bonuses, and entitled to the legally required meal and rest periods and payment of  
minimum and overtime wages due for all time worked.

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

1 four (4) years prior to the filing of this Complaint and ending on the date as determined by the  
2 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 5. 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 to 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 6. The true names and capacities, whether individual, corporate, subsidiary,  
16 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are  
17 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious  
18 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this  
19 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are  
20 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief  
21 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,  
22 inclusive, are responsible in some manner for one or more of the events and happenings that  
23 proximately caused the injuries and damages hereinafter alleged.

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

1 Defendants are jointly and severally liable to PLAINTIFF and the other members of the  
2 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the  
3 Defendants' agents, servants and/or employees.

4 8. DEFENDANT was PLAINTIFF'S employer or persons acting on behalf of the  
5 PLAINTIFF'S employer, within the meaning of California Labor Code § 558, who violated or  
6 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision  
7 regulating hours and days of work in any order of the Industrial Welfare Commission and, as  
8 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,  
9 at all relevant times.

10 9. DEFENDANT was PLAINTIFF'S employer or persons acting on behalf of  
11 PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person,  
12 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any  
13 employee a wage less than the minimum fixed by California state law, and as such, are subject to  
14 civil penalties for each underpaid employee.

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

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

### 23 **JURISDICTION AND VENUE**

24 12. This Court 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           13. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
2 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs  
3 the CALIFORNIA CLASS across California, including in this County, and committed the  
4 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

5   **THE CONDUCT**

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

24           **A. Meal Period Violations**

25           15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was  
26 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,  
27 meaning the time during which an employee is subject to the control of an employer, including  
28 all the time the employee is suffered or permitted to work. From time to time during the CLASS

1 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work  
2 without paying them for all the time they were under DEFENDANT’s control. Specifically,  
3 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be  
4 PLAINTIFF’S off-duty meal break. Indeed, there were many days where PLAINTIFF did not  
5 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS  
6 Members forfeited minimum wage and overtime compensation by regularly working without their  
7 time being accurately recorded and without compensation at the applicable minimum wage and  
8 overtime rates. DEFENDANT’s uniform policy and practice not to pay PLAINTIFF and other  
9 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT’s business  
10 records.

11 16. From time to time during the CLASS PERIOD, as a result of their rigorous work  
12 schedules and DEFENDANT’s inadequate staffing practices, PLAINTIFF and other  
13 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty  
14 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other  
15 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for  
16 more than five (5) hours during some shifts without receiving a meal break. Further,  
17 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second  
18 off-duty meal period for some workdays in which these employees are required by DEFENDANT  
19 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other  
20 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed “on-  
21 duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other  
22 CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call.  
23 DEFENDANT’s failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with  
24 legally required meal breaks is evidenced by DEFENDANT’s business records. PLAINTIFF and  
25 other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional  
26 compensation and in accordance with DEFENDANT’s strict corporate policy and practice.

27 **B. Rest Period Violations**

28

1           17. From time to time during the CLASS PERIOD, PLAINTIFF and other  
2 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without  
3 being provided ten (10) minute rest periods as a result of their rigorous work requirements and  
4 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied  
5 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four  
6 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some  
7 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and  
8 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from  
9 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA  
10 CLASS Members were, from time to time, required to remain on duty and/or on call. PLAINTIFF  
11 and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu*  
12 thereof. As a result of their rigorous work schedules and DEFENDANT's inadequate staffing,  
13 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their  
14 proper rest periods by DEFENDANT and DEFENDANT's managers.

15       **C. Unreimbursed Business Expenses**

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

27           19. In the course of their employment, DEFENDANT required PLAINTIFF and other  
28 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal vehicles

1 as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other  
2 CALIFORNIA CLASS Members were required to use their vehicles in order to drive between  
3 job sites. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other  
4 CALIFORNIA CLASS Members for the use of their personal vehicles. As a result, in the course  
5 of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS  
6 Members incurred unreimbursed business expenses that included, but were not limited to, costs  
7 related to the use of their personal vehicles, all on behalf of and for the benefit of DEFENDANT.

8 **D. Wage Statement Violations**

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

17 21. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
18 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for  
19 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also  
20 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and  
21 accurate wage statements which failed to show, among other things, all deductions, the total hours  
22 worked and all applicable hourly rates in effect during the pay period, and the corresponding  
23 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed  
24 meal and rest periods.

25 22. In addition to the foregoing, DEFENDANT, from time to time, failed to provide  
26 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with  
27 Cal. Lab. Code § 226.  
28

1           23. As a result, DEFENDANT issued PLAINTIFF and other members of the  
2 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,  
3 DEFENDANT’s violations are knowing and intentional, were not isolated due to an unintentional  
4 payroll error due to clerical or inadvertent mistake.

5           **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

6           24. During the CLASS PERIOD, from time-to-time DEFENDANT failed and  
7 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS  
8 for all hours worked.

9           25. During the CLASS PERIOD, from time-to-time DEFENDANT required  
10 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift  
11 work, including but not limited to the time spent booting up computer systems prior to being able  
12 to clock in for shifts. This resulted in PLAINTIFF and other members of the CALIFORNIA  
13 CLASS to have to work while off-the-clock.

14           26. DEFENDANT directed and directly benefited from the undercompensated off-the-  
15 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

16           27. DEFENDANT controlled the work schedules, duties, and protocols, applications,  
17 assignments, and employment conditions of PLAINTIFF and the other members of the  
18 CALIFORNIA CLASS.

19           28. DEFENDANT was able to track the amount of time PLAINTIFF and the other  
20 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to  
21 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all  
22 wages earned and owed for all the work they performed.

23           29. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-  
24 exempt employees, subject to the requirements of the California Labor Code.

25           30. DEFENDANT’s policies and practices deprived PLAINTIFF and the other  
26 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed  
27 for the off-the-clock work activities. Because PLAINTIFF and the other members of the  
28 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than



1 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime  
2 pay.

3 31. DEFENDANT knew or should have known that PLAINTIFF and the other  
4 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

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

11 **F. Unlawful Rounding Practices**

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

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

1 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without  
2 receiving an off-duty meal break.

3 **G. Timekeeping Manipulation**

4 35. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an  
5 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of  
6 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the  
7 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal  
8 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally  
9 alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and other  
10 members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours  
11 worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed  
12 rest break.

13 36. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from  
14 time-to-time, forfeited time worked by working without their time being accurately recorded and  
15 without compensation at the applicable pay rates.

16 37. The mutability of the timekeeping system also allowed DEFENDANTS to alter  
17 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'  
18 timekeeping system so as to create the appearance that PLAINTIFF and other members of the  
19 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees  
20 were not at all times provided an off-duty meal break. This practice is a direct result of  
21 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)  
22 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

23 38. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
24 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit  
25 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and  
26 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all  
27 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business  
28 records.

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

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

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

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

23 42. However, from-time-to-time, when calculating the regular rate of pay, in those pay  
24 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double  
25 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-  
26 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus  
27 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked  
28 rather than just all non-overtime hours worked. Management and supervisors described the  
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 redeemed 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 43. In violation of the applicable sections of the California Labor Code and the  
13 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT 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 DEFENDANT is intended to purposefully avoid the payment  
18 of the correct overtime and double time compensation, meal and rest period premiums, and sick  
19 pay as required by California law which allowed DEFENDANT to illegally profit and gain an  
20 unfair advantage over competitors who complied with the law. To the extent equitable tolling  
21 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the  
22 CLASS PERIOD should be adjusted accordingly.

23 **I. Violations for Untimely Payment of Wages**

24 44. Pursuant to California Labor Code section 204, PLAINTIFF and the  
25 CALIFORNIA CLASS members were entitled to timely payment of wages during their  
26 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not  
27 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,  
28 meal period premium wages, and rest period premium wages within permissible time period.

1     **J. Unlawful Deductions**

2           45.     DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF  
3 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do  
4 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,  
5 DEFENDANTS violated Labor Code § 221.

6           46.     Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take  
7 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.  
8 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)  
9 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to  
10 provide PLAINTIFF with a second off-duty meal period each workday in which he was required  
11 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF  
12 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.  
13 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was  
14 supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks  
15 without additional compensation and in accordance with DEFENDANT’S strict corporate policy  
16 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to  
17 comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse PLAINTIFF for  
18 the use of his personal vehicle in violation of Cal. Lab. Code § 2802. To date, DEFENDANT has  
19 not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to  
20 him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy  
21 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

22     **K. Plaintiff’s Individual Claims**

23           47.     PLAINTIFF was employed by DEFENDANT in California from December of  
24 2021 to May of 2022. On or around May 22, 2022, PLAINTIFF was wrongfully constructively  
25 discharged from his employment with DEFENDANT.

26           48.     Throughout his employment with DEFENDANT, PLAINTIFF was treated  
27 differently and unfairly by DEFENDANT and its agents, all in retaliation against PLAINTIFF for  
28 various protected activities.

1           49. Throughout his employment, PLAINTIFF complained to DEFENDANT about  
2 DEFENDANT’S unlawful practices. Specifically, PLAINTIFF complained to DEFENDANT  
3 about DEFENDANT’S unlawful practices, including but not limited to, DEFENDANT’S refusal  
4 to schedule PLAINTIFF for work once he returned from taking lawful COVID-19 sick/medical  
5 leave, reports of DEFENDANT’S hazardous workplace conditions and DEFENDANT’S hostile  
6 work environment caused by DEFENDANT’S foreman, Cameron Payne’s, harassment of  
7 PLAINTIFF as a result thereof. PLAINTIFF reported the unlawful conduct to DEFENDANT, but  
8 PLAINTIFF’S report fell on deaf ears.

9           50. Specifically, prior to PLAINTIFF’S constructive discharge, PLAINTIFF tested  
10 positive for COVID-19 and took medical leave. When PLAINTIFF fully recovered and attempted  
11 to return to work, DEFENDANT refused to schedule PLAINTIFF for work. When PLAINTIFF  
12 was allowed to return to work, Payne began a pattern of animosity and harassment towards  
13 PLAINTIFF. Specifically, Mr. Payne, would nitpick, degrade, and yell at PLAINTIFF for no  
14 apparent reason. Additionally, DEFENDANT’S Foreman Richard [last name unknown] left  
15 PLAINTIFF a hostile voicemail, nitpicking, degrading, and yelling at PLAINTIFF for no apparent  
16 reason.

17           51. PLAINTIFF repeatedly reported the unlawful conduct to Mr. Payne, but  
18 PLAINTIFF’S report fell on deaf ears.

19           52. In response to PLAINTIFF’S complaints to Mr. Payne, DEFENDANT refused to  
20 schedule PLAINTIFF for a period of time.

21           53. Thereafter, on or around May 22, 2022, PLAINTIFF was wrongfully  
22 constructively terminated from his employment with DEFENDANT as he resigned due to  
23 DEFENDANT’S hostile work environment.

24           54. PLAINTIFF is informed and believes, and upon such information and belief  
25 alleges that, during PLAINTIFF’S employment with DEFENDANT and at the time of his  
26 termination, DEFENDANT’ maintained a hostile work environment directed at PLAINTIFF  
27 because he took medical leave and because of his reports and complaints regarding  
28

1 DEFENDANT’S hazardous workplace conditions, Payne’s harassment of PLAINTIFF and  
2 DEFENDANT’S refusal to reschedule PLAINTIFF when he tried to return from medical leave.

3 55. PLAINTIFF is informed and believes, and upon such information and belief  
4 alleges that, DEFENDANT’S conduct in maintaining a hostile work environment, refusing to put  
5 PLAINTIFF back on DEFENDANT’S work schedule, and terminating PLAINTIFF’S  
6 employment was part of a pattern of behavior by DEFENDANT aimed at retaliation against  
7 PLAINTIFF.

8 56. PLAINTIFF is informed and believes, and upon such information and belief  
9 alleges that, DEFENDANT forced him to resign for reasons that violate public policy.

10 57. PLAINTIFF is informed and believes, and upon such information and belief  
11 alleges that he was harmed as a result of being forced to resign and that the unlawful and  
12 discriminatory practices of DEFENDANT were substantial factors in causing PLAINTIFF’S  
13 harm.

14 58. PLAINTIFF is informed and believes, and upon such information and belief  
15 alleges that, DEFENDANTS intentionally created or knowingly permitted these working  
16 conditions, including but not limited to, retaliatory employment practices against employees who  
17 took medical leave and against employees who complained about a hostile work environment.

18 59. PLAINTIFF is informed and believes, and upon such information and belief  
19 alleges that, the retaliatory hiring and promoting practices were so intolerable that a reasonable  
20 person in PLAINTIFF’S position would have had no reasonable alternative except to resign.

21 **CLASS ACTION ALLEGATIONS**

22 60. PLAINTIFF bring this Class Action on behalf of himself, and a California class  
23 defined as all persons who are or previously were employed by DEFENDANT in California and  
24 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period  
25 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined  
26 by the Court (the “CLASS PERIOD”).

27 61. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been  
28 deprived of wages and penalties from unpaid wages earned and due, including but not limited to

1 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,  
2 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate  
3 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain  
4 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

5         62. The members of the class are so numerous that joinder of all class members is  
6 impractical.

7         63. Common questions of law and fact regarding DEFENDANT's conduct, including  
8 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately  
9 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the  
10 regular rate of compensation for missed meal and rest period premiums, failing to provide legally  
11 compliant meal and rest periods, failure to provide accurate itemized wage statements accurate,  
12 and failure to ensure they are paid at least minimum wage and overtime, exist as to all members  
13 of the class and predominate over any questions affecting solely any individual members of the  
14 class. Among the questions of law and fact common to the class are:

- 15             a. Whether DEFENDANT maintained legally compliant meal period policies and  
16 practices;
- 17             b. Whether DEFENDANT maintained legally compliant rest period policies and  
18 practices;
- 19             c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
20 Members accurate premium payments for missed meal and rest periods;
- 21             d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
22 Members accurate overtime wages;
- 23             e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
24 Members at least minimum wage for all hours worked;
- 25             f. Whether DEFENDANT issued legally compliant wage statements;
- 26             g. Whether DEFENDANT committed an act of unfair competition by systematically  
27 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA  
28 CLASS for all time worked;



- 1           h. Whether DEFENDANT committed an act of unfair competition by systematically  
2           failing to record all meal and rest breaks missed by PLAINTIFF and other  
3           CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit  
4           of this work, required employees to perform this work and permits or suffers to  
5           permit this work;
- 6           i. Whether DEFENDANT committed an act of unfair competition in violation of the  
7           UCL, by failing to provide the PLAINTIFF and the other members of the  
8           CALIFORNIA CLASS with the legally required meal and rest periods.

9           64. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as  
10 a result of DEFENDANT’s conduct and actions alleged herein.

11           65. PLAINTIFF’S claims are typical of the claims of the CALIFORNIA CLASS, and  
12 PLAINTIFF have the same interests as the other members of the class.

13           66. PLAINTIFF will fairly and adequately represent and protect the interests of the  
14 CALIFORNIA CLASS Members.

15           67. PLAINTIFF retained able class counsel with extensive experience in class action  
16 litigation.

17           68. Further, PLAINTIFF’S interests are coincident with, and not antagonistic to, the  
18 interest of the other CALIFORNIA CLASS Members.

19           69. There is a strong community of interest among PLAINTIFF and the members of  
20 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are  
21 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries  
22 sustained.

23           70. The questions of law and fact common to the CALIFORNIA CLASS Members  
24 predominate over any questions affecting only individual members, including legal and factual  
25 issues relating to liability and damages.

26           71. A class action is superior to other available methods for the fair and efficient  
27 adjudication of this controversy because joinder of all class members is impractical. Moreover,  
28 since the damages suffered by individual members of the class may be relatively small, the

1 expense and burden of individual litigation makes it practically impossible for the members of the  
2 class individually to redress the wrongs done to them. Without class certification and  
3 determination of declaratory, injunctive, statutory, and other legal questions within the class  
4 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will  
5 create the risk of:

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

13 72. Class treatment provides manageable judicial treatment calculated to bring an  
14 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of  
15 the conduct of DEFENDANT.

16 **FIRST CAUSE OF ACTION**

17 **Unlawful Business Practices**

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

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

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

23 74. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
24 Code § 17021.

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

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

8 76. By the conduct alleged herein, DEFENDANT has engaged and continues to  
9 engage in a business practice which violates California law, including but not limited to, the  
10 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
11 including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198,  
12 and 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.  
13 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
14 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

79. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
2 DEFENDANT.

3 80. By the conduct alleged herein, DEFENDANT's practices were also unfair and  
4 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide  
5 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as  
6 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

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

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

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

14 **SECOND CAUSE OF ACTION**

15 **Failure To Pay Minimum Wages**

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

17 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

21 89. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for  
22 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial  
23 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay  
24 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

27  
28

1           91. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
2 commission is the minimum wage to be paid to employees, and the payment of a less wage than  
3 the minimum so fixed is unlawful.

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

6           93. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the  
7 other members of the CALIFORNIA CLASS without regard to the correct amount of time they  
8 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and  
9 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the  
10 CALIFORNIA CLASS.

11           94. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
12 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
13 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF  
14 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

21           96. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
22 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
23 minimum wage compensation for their time worked for DEFENDANT.

24           97. During the CLASS PERIOD, PLAINTIFF and the other members of the  
25 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a  
26 failure to pay all earned wages.

27           98. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
28 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true

1 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have  
2 suffered and will continue to suffer an economic injury in amounts which are presently unknown  
3 to them, and which will be ascertained according to proof at trial.

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

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

19 101. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request  
20 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the  
21 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the  
22 California Labor Code and/or other applicable statutes. To the extent minimum wage  
23 compensation is determined to be owed to the CALIFORNIA CLASS Members who have  
24 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or  
25 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.  
26 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS  
27 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good  
28

1 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and  
2 recover statutory costs.

3 **THIRD CAUSE OF ACTION**

4 **Failure To Pay Overtime Compensation**

5 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

6 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

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

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

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

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

24 107. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members  
25 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time  
26 they worked, including overtime work.

27 108. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
28 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of



1 implementing a uniform policy and practice that failed to accurately record overtime worked by  
2 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to  
3 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,  
4 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve  
5 (12) hours in a workday, and/or forty (40) hours in any workweek.

6 109. In committing these violations of the California Labor Code, DEFENDANT  
7 inaccurately recorded overtime worked and consequently underpaid the overtime worked by  
8 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal  
9 attempt to avoid the payment of all earned wages, and other benefits in violation of the California  
10 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and  
11 regulations.

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

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

23 112. During the CLASS PERIOD, PLAINTIFF and the other members of the  
24 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting  
25 a failure to pay all earned wages.

26 113. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the  
27 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the  
28 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even

1 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required  
2 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANT  
3 failed to accurately record and pay as evidenced by DEFENDANT's business records and  
4 witnessed by employees.

5 114. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
6 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true  
7 amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA  
8 CLASS have suffered and will continue to suffer an economic injury in amounts which are  
9 presently unknown to them, and which will be ascertained according to proof at trial.

10 115. DEFENDANT knew or should have known that PLAINTIFF and the other  
11 members of the CALIFORNIA CLASS were undercompensated for their time worked.  
12 DEFENDANT systematically elected, either through intentional malfeasance or gross  
13 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and  
14 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF  
15 and the other members of the CALIFORNIA CLASS the correct overtime wages for their  
16 overtime worked.

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

25 117. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS  
26 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the  
27 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the  
28 California Labor Code and/or other applicable statutes. To the extent overtime compensation is

1 determined to be owed to the CALIFORNIA CLASS Members who have terminated their  
2 employment, DEFENDANT’S conduct also violates Labor Code §§ 201 and/or 202, and therefore  
3 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which  
4 penalties are sought herein. DEFENDANT’s conduct as alleged herein was willful, intentional,  
5 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are  
6 entitled to seek and recover statutory costs.

7 **FOURTH CAUSE OF ACTION**

8 **Failure To Provide Required Meal Periods**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

10 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

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

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

9 **FIFTH CAUSE OF ACTION**

10 **Failure To Provide Required Rest Periods**

11 **(Cal. Lab. Code §§ 226.7 & 512)**

12 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

16 123. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were  
17 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.  
18 Further, these employees were denied their first rest periods of at least ten (10) minutes for some  
19 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)  
20 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and  
21 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.  
22 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour  
23 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other  
24 CALIFORNIA CLASS Members were periodically denied their proper rest periods by  
25 DEFENDANT and DEFENDANT’s managers. In addition, DEFENDANT failed to compensate  
26 PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the  
27 applicable Wage Order and Labor Code. As a result, DEFENDANT’s failure to provide  
28

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

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

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

11 **SIXTH CAUSE OF ACTION**

12 **Failure To Reimburse Employees for Required Expenses**

13 **(Cal. Lab. Code §§ 2802)**

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

15 126. 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.

18 127. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

22 128. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.  
23 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS  
24 members for required expenses incurred in the discharge of their job duties for DEFENDANT's  
25 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members  
26 for expenses which included, but were not limited to, personal expenses incurred for the use of  
27 their personal vehicles all on behalf of and for the benefit of DEFENDANT. Specifically,  
28 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use

1 their personal vehicles to execute their essential job duties on behalf of DEFENDANT.  
2 DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and  
3 the CALIFORNIA CLASS members for expenses resulting from the use of their personal vehicles  
4 for DEFENDANT within the course and scope of their employment for DEFENDANT. These  
5 expenses were necessary to complete their principal job duties. DEFENDANT is estopped by  
6 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were  
7 necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,  
8 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS  
9 members for these expenses as an employer is required to do under the laws and regulations of  
10 California.

11 129. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred  
12 by him and the CALIFORNIA CLASS members in the discharge of their job duties for  
13 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory  
14 rate and costs under Cal. Lab. Code § 2802.

### 15 **SEVENTH CAUSE OF ACTION**

#### 16 **Failure To Provide Accurate Itemized Statements**

17 **(Cal. Lab. Code § 226)**

18 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

22 131. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
23 "accurate itemized" statement in writing showing:

- 24 a. Gross wages earned,
- 25 b. (2) total hours worked by the employee, except for any employee whose  
26 compensation is solely based on a salary and who is exempt from payment of  
27 overtime under subdivision (a) of Section 515 or any applicable order of the  
28 Industrial Welfare Commission,

- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

132. When DEFENDANT did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

133. In addition to the foregoing, DEFENDANT failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

134. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct

1 wages for all missed meal and rest breaks and the amount of employment taxes which were not  
2 properly paid to state and federal tax authorities. These damages are difficult to estimate.  
3 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover  
4 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation  
5 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period  
6 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no  
7 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member  
8 of the CALIFORNIA CLASS herein).

9 **EIGHTH CAUSE OF ACTION**

10 **Failure To Pay Wages When Due**

11 **(Cal. Lab. Code § 203)**

12 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

16 136. Cal. Lab. Code § 200 provides that:

17 As used in this article:

- 18 (d) "Wages" includes all amounts for labor performed by employees of every  
19 description, whether the amount is fixed or ascertained by the standard of time,  
20 task, piece, Commission basis, or other method of calculation.  
21 (e) "Labor" includes labor, work, or service whether rendered or performed under  
22 contract, subcontract, partnership, station plan, or other agreement if the to be  
23 paid for is performed personally by the person demanding payment.

24 137. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges  
25 an employee, the wages earned and unpaid at the time of discharge are due and payable  
26 immediately."

27 138. Cal. Lab. Code § 202 provides, in relevant part, that:

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



1 designates a mailing address. The date of the mailing shall constitute the date of payment  
2 for purposes of the requirement to provide payment within 72 hours of the notice of  
3 quitting.

4 139. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS  
5 Members' employment contract.

6 140. Cal. Lab. Code § 203 provides:

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

12 141. The employment of PLAINTIFF and many CALIFORNIA CLASS Members  
13 terminated, and DEFENDANT has not tendered payment of wages to these employees who  
14 missed meal and rest breaks, as required by law.

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

### 20 **NINTH CAUSE OF ACTION**

21 **RETALIATION - Cal. Lab. Code §§1102.5 and 6310, and Government Code § 12900, et seq.**

22 **(Alleged by PLAINTIFF and against all DEFENDANTS)**

23 143. PLAINTIFF realleges and incorporates by this reference, as though fully set forth  
24 herein, the prior paragraphs of this Complaint.

25 144. At all relevant times, California Labor Code section 1102.5 was in effect and was  
26 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any  
27 employee, including PLAINTIFF, for raising complaints of illegality and/or belief that the  
28 employee may disclose illegality.

145. At all relevant times, Government Code section 12900 was in effect and was  
binding on DEFENDANT. This statute prohibits DEFENDANT from committing unlawful  
employment practices, including retaliating against PLAINTIFF for seeking to exercise rights

1 guaranteed under FEHA, participating in protected activities, and/or opposing DEFENDANT's  
2 failure to provide such rights.

3 146. PLAINTIFF raised complaints of illegality while he worked for DEFENDANT,  
4 and DEFENDANT retaliated against him by taking adverse employment actions including refusal  
5 to schedule PLAINTIFF for work and constructive employment termination against him.

6 147. As a proximate result of DEFENDANT's willful, knowing, and intentional  
7 violation(s) of Labor Code section 1102.5 and Government Code section 12900, PLAINTIFF has  
8 suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and  
9 anguish, all to his damage in a sum according to proof.

10 148. As a result of DEFENDANT's adverse employment actions against PLAINTIFF,  
11 PLAINTIFF has suffered general and special damages in sums according to proof.

12 149. DEFENDANT's misconduct was committed intentionally, in a malicious,  
13 oppressive manner, and fraudulent manner, entitling PLAINTIFF to punitive damages against  
14 DEFENDANT.

15 **TENTH CAUSE OF ACTION**

16 **CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY**

17 **(Alleged by PLAINTIFF and against all Defendants)**

18 150. PLAINTIFF realleges and incorporates by this reference, as though fully set forth  
19 herein, the prior paragraphs of this Complaint.

20 151. PLAINTIFF's wrongful termination on or about May 22, 2022 was for a pretextual  
21 reason(s) to disguise DEFENDANT's unlawful employment practices directed at PLAINTIFF.

22 152. Within the State of California there exists a substantial and fundamental public  
23 policy, set forth in the California Government Code §12900 et seq., which forbids  
24 harassment/discrimination, retaliation, and wrongful termination. Unlawful harassment includes  
25 the right to be free from unwanted, offensive harassment, and the right to protest such conduct  
26 without fear of retaliation or further harm. This public policy of the state is one that benefits the  
27 public at large and guarantees the rights of an employee to perform their work free from disability  
28 harassment/discrimination/retaliation.

1 153. The motivating reason(s) for PLAINTIFF's termination PLAINTIFF's medical  
2 leave, PLAINTIFF's complaints to DEFENDANT that DEFENDANT maintained a hostile work  
3 environment, and PLAINTIFF's protests and/or resistance thereof. PLAINTIFF's constructive  
4 discharge from his position of employment was in violation of the public policies of the State of  
5 California.

6 154. As a result of DEFENDANT's actions, PLAINTIFF has suffered substantial losses  
7 in earnings and employment benefits and emotional distress in an amount to be determined  
8 according to proof at trial.

9 155. In doing the acts herein alleged, DEFENDANT acted with malice and oppression,  
10 and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is entitled to exemplary  
11 and punitive damages from DEFENDANT in an amount to be determined to punish  
12 DEFENDANT and to deter such wrongful conduct in the future.

13 156. PLAINTIFF was harmed by DEFENDANT's wrongful and illegal termination of  
14 his employment.

15 157. The wrongful termination of the employment of PLAINTIFF was and is a  
16 substantial factor causing harm to PLAINTIFF.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFF pray 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  
for restitution of the sums incidental to DEFENDANT's violations due to

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PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

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

3. On PLAINTIFF’S individual claims:


- a. For all special damages which were sustained as a result of DEFENDANTS’ conduct, including but not limited to, back pay, front pay, lost compensation and job benefits that PLAINTIFF would have received but for the practices of DEFENDANTS.
- b. For all exemplary damages, according to proof, which were sustained as a result of DEFENDANTS’ conduct.

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

DATED: November 1, 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: November 1, 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:

Avicom Networks, Inc.  
 c/o Dana Fand  
 Jenny Countz  
 2520 Venture Oaks Way, Ste 20  
 Sacramento, CA 95833



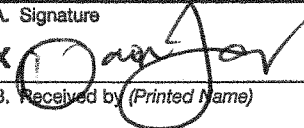
9590 9402 7624 2122 8186 94

2. Article Number (Transfer from service label)

7022 2410 0001 4932 6687

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X   Agent  
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

11-04-22

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

11/01/22 MATHEWS 002-392

3. Service Type

- |  |   |
|--|---|
| <input type="checkbox"/> Adult Signature                         | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery     | <input type="checkbox"/> Registered Mail™                           |
| <input type="checkbox"/> Certified Mail®                         | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery      | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery                     | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Restricted Delivery                        |
| <input type="checkbox"/> Insured Mail                            |   |
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