

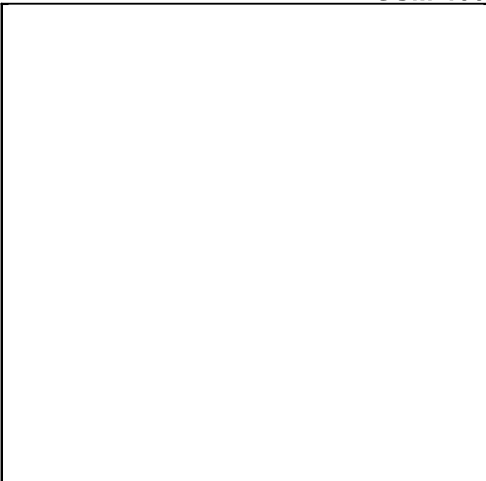
**SUMMONS  
(CITACION JUDICIAL)**

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

DWWH, INC. dba WEIR CANYON HONDA, a California corporation;  
and DOES 1-50, Inclusive,

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

ALEJANDRO ESTRADA URENO, 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):  
Orange Superior Court - Civil Complex Center  
751 West Santa Ana Blvd.  
Santa Ana, CA 92701

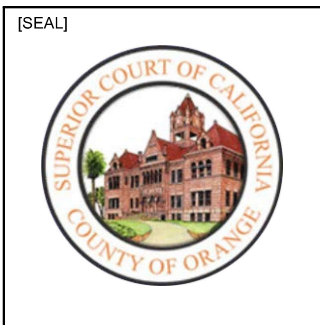
CASE NUMBER:  
(Número del Caso):  
30-2023-01316346-CU-OE-CXC

Judge William Cluster

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: 03/30/2023 DAVID H. YAMASAKI, Clerk, by \_\_\_\_\_ A. THAU \_\_\_\_\_, Deputy  
(Fecha) Clerk of the Court (Secretario) (Adjunto)

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



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

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

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

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Assigned for all purposes:  
Judge William D. Claster  
Dept. CX104

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ORANGE**

ALEJANDRO ESTRADA URENO, an individual, on behalf of himself and on behalf of all persons similarly situated,

Plaintiff,

v.

DWWH, INC. dba WEIR CANYON HONDA, a California corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: 30-2023-01316346-CU-OE-CXC

**CLASS ACTION COMPLAINT FOR:**

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

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

12 **DEMAND FOR A JURY TRIAL**

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

17 **THE PARTIES**

18 1. Defendant DWWH, INC. dba WEIR CANYON HONDA (“DEFENDANT” or  
19 “DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted  
20 and continues to conduct substantial and regular business in the state of California.

21 2. DEFENDANTS owns and operate car dealerships in California, including in the  
22 county of Orange where PLAINTIFF worked.

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

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

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

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

20           7.     PLAINTIFF has been employed by DEFENDANTS in California since July of  
21 2022, paid in part an hourly wage, commission-based compensation, non-discretionary bonuses,  
22 and entitled to minimum wages, overtime pay and legally compliant meal and rest periods.

23           8.     PLAINTIFF brings this Class Action on behalf of himself and a California class,  
24 defined as all current and former non-exempt, exempt, piece-rate based, and/or commission-based  
25 employees employed by DEFENDANTS in California ("CALIFORNIA CLASS") at any time  
26 during the period beginning four (4) years prior to the filing of this Complaint and ending on the  
27 date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the  
28

1 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars  
2 (\$5,000,000.00).

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

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

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

22 **JURISDICTION AND VENUE**

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

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

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

4 **THE CONDUCT**

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

23 **A. Meal and Rest Period Violations**

24 15. Pursuant to the Industrial Welfare Commission Wage Orders and the California  
25 Labor Codes, an employer shall not employ an employee for a work period of more than five (5)  
26 hours per day without providing the employee with a meal period of not less than thirty (30)  
27 minutes, except that if the total work period per day of the employee is no more than six (6) hours,  
28 the meal period may be waived by mutual consent of both the employer and employee. An

1 employer shall not employ an employee for a work period of more than ten (10) hours per day  
2 without providing the employee with a second meal period of not less than thirty (30) minutes,  
3 except that if the total hours worked is no more than twelve (12) hours, the second meal period  
4 may be waived by mutual consent of the employer and the employee only if the first meal period  
5 was not waived. If an employer fails to provide an employee with a mandated meal period, the  
6 employer shall pay the employee one (1) hour of pay at the employee's regular rate of  
7 compensation for each workday that the meal period is not provided.

8         16. From time-to-time during the CALIFORNIA CLASS PERIOD, as a result of  
9 understaffing and their rigorous work schedule, PLAINTIFF and other CALIFORNIA CLASS  
10 members were from time to time unable to take thirty (30) minute off duty meal breaks and were  
11 not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS  
12 Members were from time to time required to perform work as ordered by DEFENDANT for more  
13 than five (5) hours during a shift without receiving an off-duty meal break. Further,  
14 DEFENDANT from time-to-time failed to provide PLAINTIFF and CALIFORNIA CLASS  
15 members with a second off-duty meal period from time to time in which these employees were  
16 required by DEFENDANT to work ten (10) hours of work from time to time. Further, from time  
17 to time, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to  
18 maintain cordless communication devices on them during what was supposed to be their off-duty  
19 meal break in order to receive and respond to work-related communications. PLAINTIFF and  
20 the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional  
21 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

22         17. Further, pursuant to the Industrial Welfare Commission Wage Orders,  
23 DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS members for all their  
24 time worked, meaning the time during which an employee is subject to the control of an employer,  
25 including all the time the employee suffered or permitted to work. DEFENDANT required  
26 PLAINTIFF and CALIFORNIA CLASS members to work without paying them for all the time  
27 they were under the DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF  
28 to work while clocked out during what was supposed to be PLAINTIFF's off duty meal break due

1 to PLAINTIFF's rigorous work schedule and DEFENDANT's understaffing. PLAINTIFF was  
2 from time to time interrupted by work assignments while clocked out for what should have been  
3 PLAINTIFF's off-duty meal break. 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 18. Pursuant to the Industrial Welfare Commission Wage Orders and the California  
10 Labor Codes, an employer shall authorize and permit all employees to take a rest period, which  
11 so far as practical shall be in the middle of each work period. Generally, an employer must provide  
12 ten (10) minutes of paid rest for every four hours or major fraction thereof. If an employer fails  
13 to provide an employee a rest period, the employer shall pay the employee one (1) hour of pay at  
14 the employee's regular rate of pay for each workday that the rest period is not provided.

15 19. Additionally, during the CALIFORNIA CLASS PERIOD, PLAINTIFF and other  
16 CALIFORNIA CLASS members were from time-to-time required to work in excess of four (4)  
17 hours without being provided duty-free, uninterrupted, ten (10) minute rest period. Further, for  
18 the same reasons, these employees were denied their first rest periods of at least ten (10) minutes  
19 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at  
20 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,  
21 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours  
22 or more from time to time. Further, from time to time, DEFENDANT required PLAINTIFF and  
23 other CALIFORNIA CLASS Members to maintain cordless communication devices on them  
24 during what was supposed to be their off-duty rest break in order to receive and respond to work-  
25 related communications. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members  
26 were from time to time required to remain on the premises, on-duty and on-call during their rest  
27 periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with  
28 one-hour wages in lieu thereof.



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

3 20. State law provides that employees must be paid overtime at one-and-one-half times  
4 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS were compensated at  
5 an hourly rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific  
6 elements of an employee’s performance and/or commissions.

7 21. DEFENDANTS’ non-discretionary commission and bonus program provided the  
8 CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation  
9 when the employees met the various performance goals set by DEFENDANT. However, when  
10 calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA  
11 CLASS worked overtime and earned non-discretionary bonus and/or commission wages,  
12 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or  
13 commission wages as part of the employees’ “regular rate of pay.”

14 22. Management and supervisors described the bonus and commissions programs and  
15 commission compensation program to potential and new employees as part of the compensation  
16 package for new and used car salespersons including PLAINTIFF and the CALIFORNIA  
17 CLASS. As a matter of law, the incentive and commission compensation received by  
18 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly  
19 calculated into the “regular rate of pay” for purposes of overtime and double time compensation,  
20 meal and rest period premium payments, and sick pay. DEFENDANT’s failure to do so has  
21 resulted in DEFENDANT’s systematic underpayment of overtime and double time compensation,  
22 meal and rest period premium payments, and sick pay to PLAINTIFF and other CALIFORNIA  
23 CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time  
24 for non-employees shall be calculated in the same manner as the regular rate of pay for the  
25 workweek in which the employee uses paid sick time, whether or not the employee actually works  
26 overtime in that workweek. DEFENDANTS’ conduct, as articulated herein, by failing to include  
27 the incentive compensation as part of the “regular rate of pay” for purposes of sick pay  
28

1 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable  
2 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

14 **C. Commission and Piece-Rate Violations**

15 24. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and  
16 the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those  
17 instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission  
18 and/or piece-rate basis, PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately  
19 compensated for all non-productive time at an hourly rate that is no less than the applicable  
20 minimum wage. Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA  
21 CLASS were paid in part on a commission and/or piece-rate basis, DEFENDANT failed to  
22 separately compensate PLAINTIFF and the CALIFORNIA CLASS for all non-productive time,  
23 including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable  
24 minimum wage. As a result, PLAINTIFF and the CALIFORNIA CLASS forfeited minimum  
25 wages and overtime wages by DEFENDANT'S failure to separately compensate their non-  
26 productive time at an hourly rate that is no less than the applicable minimum wage.

27 25. Further, from time-to-time during the CLASS PERIOD, DEFENDANTS  
28 improperly misclassified PLAINTIFF and the CALIFORNIA CLASS members who were paid

1 on a draw versus commission basis as exempt from overtime compensation. During the CLASS  
2 PERIOD, DEFENDANTS included advanced draws in order to meet the salary-basis test for the  
3 overtime exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet  
4 the salary-basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-  
5 254.) As a result, PLAINTIFF and the CALIFORNIA CLASS members who were paid on a draw  
6 versus commission basis forfeited overtime wages by DEFENDANTS' failure to accurately  
7 classify them as non-exempt from overtime compensation.

8 **D. Off-the-Clock Minimum Wage and Overtime Violations**

9 26. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS  
10 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time  
11 worked, meaning the time during which an employee is subject to the control of an employer,  
12 including all the time the employee is suffered or permitted to work. From time to time,  
13 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without  
14 paying them for all the time they were under DEFENDANTS' control.

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

23 28. DEFENDANTS directed and directly benefited from the uncompensated off-the-  
24 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

25 29. DEFENDANTS controlled the work schedules, duties, protocols, applications,  
26 assignments, and employment conditions of PLAINTIFF and the other members of the  
27 CALIFORNIA CLASS.

28

1           30. DEFENDANTS were able to track the amount of time PLAINTIFF and the other  
2 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to  
3 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all  
4 wages earned and owed for all the work they performed, including pre-shift, post shift and during  
5 meal period off-the-clock work.

6           31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-  
7 exempt employees, subject to the requirements of the California Labor Code.

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

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

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

20 **E. Unreimbursed Business Expenses**

21           35. DEFENDANTS as a matter of corporate policy, practice, and procedure,  
22 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF  
23 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and  
24 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf  
25 of DEFENDANTS. Under California Labor Code Section 2802, employers are required to  
26 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.  
27 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all  
28 necessary expenditures or losses incurred by the employee in direct consequence of the discharge

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

4           36. In the course of their employment, DEFENDANTS required PLAINTIFF and  
5 other CALIFORNIA CLASS Members to use their personal cell phones and personal vehicles as  
6 a result of and in furtherance of their job duties as employees for DEFENDANT. But for the use  
7 of their own personal cell phones and personal vehicles, PLAINTIFF and the CALIFORNIA  
8 CLASS Members could not complete their essential job duties, including but not limited to,  
9 sending and receiving work-related communications from DEFENDANTS and DEFENDANTS’  
10 clients and using personal vehicles to deliver paperwork to DEFENDANT and DEFENDANTS’  
11 clients. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other  
12 CALIFORNIA CLASS Members for their use of their personal cell phones and personal vehicles.  
13 As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF and other  
14 CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were not limited  
15 to, costs related to the use of their personal cellular phones and personal vehicles, all on behalf of  
16 and for the benefit of DEFENDANTS.

17 **F. Wage Statement Violations**

18           37. California Labor Code Sections 226 and 226.2 require an employer to furnish its  
19 employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total  
20 hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all  
21 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is  
22 paid, (7) the name of the employee and only the last four digits of the employee’s social security  
23 number or an employee identification number other than a social security number, (8) the name  
24 and address of the legal entity that is the employer, (9) all applicable hourly rates in effect during  
25 the pay period and the corresponding number of hours worked at each hourly rate by the  
26 employee; (10) the total hours of compensable rest and recovery periods, the rate of compensation,  
27 and the gross wages paid for those periods during the pay period, and (11) the total hours of other  
28

1 nonproductive time, the rate of compensation, and the gross wages paid for that time during the  
2 pay period.

3 38. From time-to-time during the CALIFORNIA CLASS PERIOD, DEFENDANT  
4 furnished PLAINTIFF and the CALIFORNIA CLASS written wage statements that failed to  
5 accurately show (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units  
6 earned and any applicable piece-rate, (4) net wages earned, (5) all applicable hourly rates in effect  
7 during the pay period and the corresponding number of hours worked at each hourly rate by the  
8 employee; (6) the total hours of compensable rest and recovery periods, the rate of compensation,  
9 and the gross wages paid for those periods during the pay period, and (7) the total hours of other  
10 nonproductive time, the rate of compensation, and the gross wages paid for that time during the  
11 pay period.

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

15 40. As a result, DEFENDANTS issued PLAINTIFF and the CALIFORNIA CLASS  
16 with wage statements that violate Cal. Lab. Code §§ 226 and 226.2. Further, DEFENDANTS'  
17 violations are knowing and intentional, were not isolated or due to an unintentional payroll error  
18 due to clerical or inadvertent mistake.

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

20 41. 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 **H. Unlawful Deductions**

26 42. 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 43. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally  
4 required off-duty meal breaks to him and paid rest periods to him as required by the applicable  
5 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for his missed  
6 meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent him from  
7 being relieved of all of his duties for the legally required off-duty meal periods. Further,  
8 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday  
9 in which PLAINTIFF was required by DEFENDANT to work ten (10) hours of work. As a result,  
10 DEFENDANT’S failure to provide PLAINTIFFS with the legally required second off-duty meal  
11 period is evidenced by DEFENDANT’s business records. From time to time, and as a result of  
12 DEFENDANT not accurately recording all missed meal and rest periods, and failing to pay  
13 minimum wages due for all time worked and separate compensation for rest breaks, the wage  
14 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,  
15 Labor Code Section 226(a). Further, DEFENDANT failed to reimburse PLAINTIFF for all  
16 required business expenses including for the use of his personal cell phone. To date,  
17 DEFENDANT has yet to pay PLAINTIFF all of his wages due to him and all premiums due to  
18 him for missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages owed  
19 to him under California Labor Code Section 203. The amount in controversy for PLAINTIFF  
20 individually does not exceed \$75,000.

21 **THE CALIFORNIA CLASS**

22 44. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
23 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a Class  
24 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of all current and former non-exempt,  
25 exempt, exempt, piece-rate based, and/or commission-based employees employed by  
26 DEFENDANT in California (“CALIFORNIA CLASS”) at any time during the period beginning  
27 four (4) years prior to the filing of this Complaint and ending on the date as determined by the  
28

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

3 45. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
4 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
5 accordingly.

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

13 47. The members of the class are so numerous that joinder of all class members is  
14 impractical.

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

- 22 i. Whether DEFENDANTS maintained legally compliant meal period policies  
23 and practices;
- 24 ii. Whether DEFENDANTS maintained legally compliant rest period policies  
25 and practices;
- 26 iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA  
27 CLASS Members accurate premium payments for missed meal and rest  
28 periods;



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

20           49.   PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as  
21           a result of DEFENDANTS' conduct and actions alleged herein.

22           50.   PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has  
23           the same interests as the other members of the class.

24           51.   PLAINTIFF will fairly and adequately represent and protect the interests of the  
25           CALIFORNIA CLASS Members.

26           52.   PLAINTIFF retained able class counsel with extensive experience in class action  
27           litigation.

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

1           54. There is a strong community of interest among PLAINTIFF and the members of  
2 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are  
3 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries  
4 sustained.

5           55. The questions of law and fact common to the CALIFORNIA CLASS Members  
6 predominate over any questions affecting only individual members, including legal and factual  
7 issues relating to liability and damages.

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

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

23           57. Class treatment provides manageable judicial treatment calculated to bring an  
24 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of  
25 the conduct of DEFENDANTS.

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27 ///  
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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

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

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

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

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

19 Cal. Bus. & Prof. Code § 17203.

20 61. By the conduct alleged herein, DEFENDANT has engaged and continues to engage  
21 in a business practice which violates California law, including but not limited to, the applicable  
22 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code  
23 including Sections 201, 202, 203, 204, 206.5, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198  
24 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.  
25 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
26 constitute unfair competition, including restitution of wages wrongfully withheld.

27 62. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair  
28 in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or

1 substantially injurious to employees, and were without valid justification or utility for which this  
2 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California  
3 Business & Professions Code, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 consequences to them, and with the despicable intent of depriving them of their property and legal  
2 rights, and otherwise causing them injury in order to increase company profits at the expense of  
3 these employees.

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

15 **THIRD CAUSE OF ACTION**

16 **Failure To Pay Overtime Compensation**

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

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

19 87. 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 88. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for  
23 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial  
24 Welfare Commission requirements for DEFENDANTS' failure to properly compensate the  
25 members of the CALIFORNIA CLASS for all overtime worked, including, work performed in  
26 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek during the CLASS  
27 PERIOD.

28 89. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public



1 policy, an employer must timely pay its employees for all hours worked.

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

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

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

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

20 94. In committing these violations of the California Labor Code, DEFENDANT acted  
21 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of  
22 the California Labor Code, the Industrial Welfare Commission requirements and other applicable  
23 laws and regulations.

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

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

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

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

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

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

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

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

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

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

18 **FOURTH CAUSE OF ACTION**

19 **Failure To Provide Required Meal Periods**

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

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

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

25 104. During the CLASS PERIOD, DEFENDANT failed to provide all the legally  
26 required off-duty meal breaks to PLAINTIFF and the CALIFORNIA CLASS as required by the  
27 applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and  
28 the CALIFORNIA CLASS did not prevent these employees from being relieved of all of their

1 duties for the legally required off-duty meal periods. As a result of their rigorous work schedules,  
2 PLAINTIFF and the CALIFORNIA CLASS were often not fully relieved of duty by  
3 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide  
4 PLAINTIFF and the CALIFORNIA CLASS with legally required meal breaks prior to their fifth  
5 (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF  
6 and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without  
7 additional compensation and in accordance with DEFENDANT's strict corporate policy and  
8 practice.

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

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

17 **FIFTH CAUSE OF ACTION**

18 **Failure To Provide Required Rest Periods**

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

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

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

24 108. During the CLASS PERIOD, PLAINTIFF and the CALIFORNIA CLASS were  
25 also required to work in excess of four (4) hours without being provided ten (10) minute rest  
26 periods. Further, these employees were denied their first rest periods of at least ten (10) minutes  
27 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at  
28 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,

1 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours  
2 or more. PLAINTIFF and the CALIFORNIA CLASS were also not provided with one-hour  
3 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and the  
4 CALIFORNIA CLASS were periodically denied their proper rest periods by DEFENDANT and  
5 DEFENDANT's managers.

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

11 110. As a proximate result of the aforementioned violations, PLAINTIFF and the  
12 CALIFORNIA CLASS have been damaged in an amount according to proof at trial, and seek all  
13 wages earned and due, interest, penalties, expenses and costs of suit.

14 **SIXTH CAUSE OF ACTION**

15 **Failure To Provide Accurate Itemized Statements**

16 **(Cal. Lab. Code §§ 226)**

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

18 111. 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 1. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
22 "accurate itemized" statement in writing showing: (1) Gross wages earned; (2) Total hours  
23 worked by the employee, except for any employee whose compensation is solely based on a salary  
24 and who is exempt from payment of overtime under subdivision (a) of Section 515 or any  
25 applicable order of the Industrial Welfare Commission; (3) The number of piece-rate units earned  
26 and any applicable piece rate if the employee is paid on a piece-rate basis; (4) All deductions,  
27 provided that all deductions made on written orders of the employee may be aggregated and  
28 shown as one item; (5) Net wages earned; (6) The inclusive dates of the period for which the

1 employee is paid.; (7) The name of the employee and his or her social security number, except  
2 that by January 1, 2008, only the last four digits of his or her social security number or an  
3 employee identification number other than a social security number may be shown on the itemized  
4 statement; (8) The name and address of the legal entity that is the employer, and (9) All applicable  
5 hourly rates in effect during the pay period and the corresponding number of hours worked at  
6 each hourly rate by the employee.

7 2. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF  
8 and the other members of the CALIFORNIA CLASS with complete and accurate wage statements  
9 which failed to accurately show, among other things, (1) Gross wages earned; (2) Total hours  
10 worked by the employee, (3) The number of piece-rate units earned and any applicable piece rate  
11 if the employee is paid on a piece-rate basis; (4) All deductions; (5) Net wages earned; and (6) all  
12 applicable hourly rates in effect during the pay period and the corresponding number of hours  
13 worked at each hourly rate.

14 3. Further, during the CLASS PERIOD, DEFENDANTS also failed to provide  
15 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate  
16 wage statements in compliance with Cal. Labor Code Section 226.2, which failed to accurately  
17 show, among other things: (1) the total hours of compensable rest and recovery periods; and (2)  
18 the total hours of other nonproductive time, the rate of compensation for the nonproductive time  
19 and the gross wages paid for the nonproductive time during the applicable pay period.

20 4. PLAINTIFFS and the members of the CALIFORNIA CLASS were injured by  
21 DEFENDANTS' violations in that they could not promptly and easily determine from the wage  
22 statement alone, the amount of gross or net wages paid, the total hours worked, the number pf  
23 piece-rate units earned and any applicable piece-rate, all applicable hourly rates in effect during  
24 the pay period and the corresponding number of hours worked at each hourly rate to the employee  
25 during the applicable pay period.

26 5. DEFENDANTS violations of Cal. Labor Code § 226 and 226.2 were knowing and  
27 intentional in that DEFENDANTS willfully intended to issue wage statements that were out of  
28 compliance with § 226 and 226.2.

1           112. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor  
2 Code § 226 and 226.2, causing injury and damages to the PLAINTIFF and the other members of  
3 the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended  
4 calculating the correct rates for the overtime worked and the amount of employment taxes which  
5 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.  
6 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover  
7 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation  
8 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period  
9 pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor  
10 Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more  
11 than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the  
12 CALIFORNIA CLASS herein).

13   **SEVENTH CAUSE OF ACTION**

14   **Failure To Pay Wages When Due**

15   **(Cal. Lab. Code §§ 203)**

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

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

19           114. Cal. Lab. Code § 200 provides, in relevant part, that:

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

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

1 immediately.”

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

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

14 117. There was no definite term in PLAINTIFF’s or any CALIFORNIA CLASS  
15 Members’ employment contract.

16 118. Cal. Lab. Code § 203 provides, in relevant part, that:

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

23  
24 119. The employment of PLAINTIFF and many CALIFORNIA CLASS Members  
25 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

26 120. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the  
27 members of the CALIFORNIA CLASS whose employment has terminated and who have unpaid  
28 minimum and/or overtime wages and/or missed meal and rest breaks without being paid the



1 legally required penalties by DEFENDANT, PLAINTIFF demands up to thirty days of pay as  
2 penalty for not timely paying all wages due at time of termination for all employees who  
3 terminated employment during the CLASS PERIOD plus interest and statutory costs as allowed  
4 by law.

5 **EIGHTH CAUSE OF ACTION**

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

7 **(Cal. Lab. Code §§ 2802)**

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

9 121. 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.

12 122. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

19 123. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.  
20 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the  
21 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for  
22 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of  
23 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to  
24 using their personal cellular phones and personal vehicles all on behalf of and for the benefit of  
25 DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were  
26 required by DEFENDANTS to use their personal cell phones and personal vehicles to execute  
27 their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice  
28 and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS

1 for expenses resulting from using their personal cellular phones and personal vehicles for  
2 DEFENDANTS within the course and scope of their employment for DEFENDANTS. These  
3 expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by  
4 DEFENDANTS' conduct to assert any waiver of their expectation. Although these expenses were  
5 necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA CLASS,  
6 DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the members of the  
7 CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and  
8 regulations of California.

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

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)**

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

19 126. 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  
26 aggrieved employees, acting as private attorneys general to recover civil penalties for Labor  
27 Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to  
28 arbitration.

1           127. 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 January 20,  
5 2022 until the present (the "AGGRIEVED EMPLOYEES").

6           128. On January 20, 2023, 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           129. 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.

27 ///  
28

**PRAYER FOR RELIEF**

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

1. On behalf of the CALIFORNIA CLASS:

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

2. On behalf of the CALIFORNIA CLASS:

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

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violation of Cal. Lab. Code § 226

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

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

4. On all claims:

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

DATED: March 30, 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: March 30, 2023

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for PLAINTIFF

# **EXHIBIT 1**

January 20, 2023

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

**DWWH, INC. dba WEIR CANYON HONDA**

c/o Glenn M Quintos

37 Kentworth

Irvine, CA 92602

*Sent via Certified Mail and Return Receipt No. 7022 2410 0003 0424 4825*

**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 ALEJANDRO ESTRADA URENO (“Plaintiff”) and other aggrieved employees in a proposed lawsuit against Defendant DWWH, INC. dba WEIR CANYON HONDA (“Defendant”). Plaintiff has been employed by Defendant in California since July of 2022 as a non-exempt employee, paid in part by commission-based compensation, 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 of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages. Plaintiff further contends that Defendant failed to advise Plaintiff and the other aggrieved employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods when working on a commission and/or commission draw basis and failed to separately compensate Plaintiff and the other aggrieved employees for the non-productive time, including for their rest periods. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98, 110. Further, Defendant improperly misclassified aggrieved employees who were paid on a draw versus commission basis as exempt from overtime compensation. Defendant included advanced draws in order to meet the salary-basis test for the overtime exemption. However, Defendant cannot rely on advanced draws in order to meet the salary-basis test for such an exemption. *See Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-254.

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 applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

**Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt, exempt, commission-based and/or piece-rate based 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 is on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

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

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

Very truly yours,  
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.



**ZAKAY LAW GROUP, APLC**

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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ORANGE**

ALEJANDRO ESTRADA URENO, an individual, on behalf of himself and on behalf of all persons similarly situated,  
Plaintiff,

v.

DWWH, INC. dba WEIR CANYON HONDA, a California corporation; and DOES 1-50, Inclusive,  
Defendants.

Case No:

**CLASS ACTION COMPLAINT FOR:**

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

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

**DEMAND FOR A JURY TRIAL**

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

**THE PARTIES**

1. Defendant DWWH, INC. dba WEIR CANYON HONDA (“DEFENDANT” or “DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. DEFENDANTS owns and operate car dealerships in California, including in the county of Orange where PLAINTIFF worked.

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

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

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

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

20           7.     PLAINTIFF has been employed by DEFENDANTS in California since July of  
21 2022, paid in part an hourly wage, commission-based compensation, non-discretionary bonuses,  
22 and entitled to minimum wages, overtime pay and legally compliant meal and rest periods.

23           8.     PLAINTIFF brings this Class Action on behalf of himself and a California class,  
24 defined as all current and former non-exempt, exempt, piece-rate based, and/or commission-based  
25 employees employed by DEFENDANTS in California ("CALIFORNIA CLASS") at any time  
26 during the period beginning four (4) years prior to the filing of this Complaint and ending on the  
27 date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the  
28

1 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars  
2 (\$5,000,000.00).

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

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

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

22 **JURISDICTION AND VENUE**

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

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

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

4 **THE CONDUCT**

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

23 **A. Meal and Rest Period Violations**

24 15. Pursuant to the Industrial Welfare Commission Wage Orders and the California  
25 Labor Codes, an employer shall not employ an employee for a work period of more than five (5)  
26 hours per day without providing the employee with a meal period of not less than thirty (30)  
27 minutes, except that if the total work period per day of the employee is no more than six (6) hours,  
28 the meal period may be waived by mutual consent of both the employer and employee. An

1 employer shall not employ an employee for a work period of more than ten (10) hours per day  
2 without providing the employee with a second meal period of not less than thirty (30) minutes,  
3 except that if the total hours worked is no more than twelve (12) hours, the second meal period  
4 may be waived by mutual consent of the employer and the employee only if the first meal period  
5 was not waived. If an employer fails to provide an employee with a mandated meal period, the  
6 employer shall pay the employee one (1) hour of pay at the employee's regular rate of  
7 compensation for each workday that the meal period is not provided.

8         16. From time-to-time during the CALIFORNIA CLASS PERIOD, as a result of  
9 understaffing and their rigorous work schedule, PLAINTIFF and other CALIFORNIA CLASS  
10 members were from time to time unable to take thirty (30) minute off duty meal breaks and were  
11 not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS  
12 Members were from time to time required to perform work as ordered by DEFENDANT for more  
13 than five (5) hours during a shift without receiving an off-duty meal break. Further,  
14 DEFENDANT from time-to-time failed to provide PLAINTIFF and CALIFORNIA CLASS  
15 members with a second off-duty meal period from time to time in which these employees were  
16 required by DEFENDANT to work ten (10) hours of work from time to time. Further, from time  
17 to time, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to  
18 maintain cordless communication devices on them during what was supposed to be their off-duty  
19 meal break in order to receive and respond to work-related communications. PLAINTIFF and  
20 the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional  
21 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

22         17. Further, pursuant to the Industrial Welfare Commission Wage Orders,  
23 DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS members for all their  
24 time worked, meaning the time during which an employee is subject to the control of an employer,  
25 including all the time the employee suffered or permitted to work. DEFENDANT required  
26 PLAINTIFF and CALIFORNIA CLASS members to work without paying them for all the time  
27 they were under the DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF  
28 to work while clocked out during what was supposed to be PLAINTIFF's off duty meal break due

1 to PLAINTIFF's rigorous work schedule and DEFENDANT's understaffing. PLAINTIFF was  
2 from time to time interrupted by work assignments while clocked out for what should have been  
3 PLAINTIFF's off-duty meal break. 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 18. Pursuant to the Industrial Welfare Commission Wage Orders and the California  
10 Labor Codes, an employer shall authorize and permit all employees to take a rest period, which  
11 so far as practical shall be in the middle of each work period. Generally, an employer must provide  
12 ten (10) minutes of paid rest for every four hours or major fraction thereof. If an employer fails  
13 to provide an employee a rest period, the employer shall pay the employee one (1) hour of pay at  
14 the employee's regular rate of pay for each workday that the rest period is not provided.

15 19. Additionally, during the CALIFORNIA CLASS PERIOD, PLAINTIFF and other  
16 CALIFORNIA CLASS members were from time-to-time required to work in excess of four (4)  
17 hours without being provided duty-free, uninterrupted, ten (10) minute rest period. Further, for  
18 the same reasons, these employees were denied their first rest periods of at least ten (10) minutes  
19 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at  
20 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,  
21 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours  
22 or more from time to time. Further, from time to time, DEFENDANT required PLAINTIFF and  
23 other CALIFORNIA CLASS Members to maintain cordless communication devices on them  
24 during what was supposed to be their off-duty rest break in order to receive and respond to work-  
25 related communications. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members  
26 were from time to time required to remain on the premises, on-duty and on-call during their rest  
27 periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with  
28 one-hour wages in lieu thereof.

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

3 20. State law provides that employees must be paid overtime at one-and-one-half times  
4 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS were compensated at  
5 an hourly rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific  
6 elements of an employee’s performance and/or commissions.

7 21. DEFENDANTS’ non-discretionary commission and bonus program provided the  
8 CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation  
9 when the employees met the various performance goals set by DEFENDANT. However, when  
10 calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA  
11 CLASS worked overtime and earned non-discretionary bonus and/or commission wages,  
12 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or  
13 commission wages as part of the employees’ “regular rate of pay.”

14 22. Management and supervisors described the bonus and commissions programs and  
15 commission compensation program to potential and new employees as part of the compensation  
16 package for new and used car salespersons including PLAINTIFF and the CALIFORNIA  
17 CLASS. As a matter of law, the incentive and commission compensation received by  
18 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly  
19 calculated into the “regular rate of pay” for purposes of overtime and double time compensation,  
20 meal and rest period premium payments, and sick pay. DEFENDANT’s failure to do so has  
21 resulted in DEFENDANT’s systematic underpayment of overtime and double time compensation,  
22 meal and rest period premium payments, and sick pay to PLAINTIFF and other CALIFORNIA  
23 CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time  
24 for non-employees shall be calculated in the same manner as the regular rate of pay for the  
25 workweek in which the employee uses paid sick time, whether or not the employee actually works  
26 overtime in that workweek. DEFENDANTS’ conduct, as articulated herein, by failing to include  
27 the incentive compensation as part of the “regular rate of pay” for purposes of sick pay  
28



1 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable  
2 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

14 **C. Commission and Piece-Rate Violations**

15 24. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and  
16 the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those  
17 instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission  
18 and/or piece-rate basis, PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately  
19 compensated for all non-productive time at an hourly rate that is no less than the applicable  
20 minimum wage. Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA  
21 CLASS were paid in part on a commission and/or piece-rate basis, DEFENDANT failed to  
22 separately compensate PLAINTIFF and the CALIFORNIA CLASS for all non-productive time,  
23 including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable  
24 minimum wage. As a result, PLAINTIFF and the CALIFORNIA CLASS forfeited minimum  
25 wages and overtime wages by DEFENDANT'S failure to separately compensate their non-  
26 productive time at an hourly rate that is no less than the applicable minimum wage.

27 25. Further, from time-to-time during the CLASS PERIOD, DEFENDANTS  
28 improperly misclassified PLAINTIFF and the CALIFORNIA CLASS members who were paid

1 on a draw versus commission basis as exempt from overtime compensation. During the CLASS  
2 PERIOD, DEFENDANTS included advanced draws in order to meet the salary-basis test for the  
3 overtime exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet  
4 the salary-basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-  
5 254.) As a result, PLAINTIFF and the CALIFORNIA CLASS members who were paid on a draw  
6 versus commission basis forfeited overtime wages by DEFENDANTS' failure to accurately  
7 classify them as non-exempt from overtime compensation.

8 **D. Off-the-Clock Minimum Wage and Overtime Violations**

9 26. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS  
10 were required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time  
11 worked, meaning the time during which an employee is subject to the control of an employer,  
12 including all the time the employee is suffered or permitted to work. From time to time,  
13 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without  
14 paying them for all the time they were under DEFENDANTS' control.

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

23 28. DEFENDANTS directed and directly benefited from the uncompensated off-the-  
24 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

25 29. DEFENDANTS controlled the work schedules, duties, protocols, applications,  
26 assignments, and employment conditions of PLAINTIFF and the other members of the  
27 CALIFORNIA CLASS.

28

1           30. DEFENDANTS were able to track the amount of time PLAINTIFF and the other  
2 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to  
3 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all  
4 wages earned and owed for all the work they performed, including pre-shift, post shift and during  
5 meal period off-the-clock work.

6           31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-  
7 exempt employees, subject to the requirements of the California Labor Code.

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

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

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

20 **E. Unreimbursed Business Expenses**

21           35. DEFENDANTS as a matter of corporate policy, practice, and procedure,  
22 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF  
23 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and  
24 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf  
25 of DEFENDANTS. Under California Labor Code Section 2802, employers are required to  
26 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.  
27 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all  
28 necessary expenditures or losses incurred by the employee in direct consequence of the discharge

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

4         36. In the course of their employment, DEFENDANTS required PLAINTIFF and  
5 other CALIFORNIA CLASS Members to use their personal cell phones and personal vehicles as  
6 a result of and in furtherance of their job duties as employees for DEFENDANT. But for the use  
7 of their own personal cell phones and personal vehicles, PLAINTIFF and the CALIFORNIA  
8 CLASS Members could not complete their essential job duties, including but not limited to,  
9 sending and receiving work-related communications from DEFENDANTS and DEFENDANTS’  
10 clients and using personal vehicles to deliver paperwork to DEFENDANT and DEFENDANTS’  
11 clients. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other  
12 CALIFORNIA CLASS Members for their use of their personal cell phones and personal vehicles.  
13 As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF and other  
14 CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were not limited  
15 to, costs related to the use of their personal cellular phones and personal vehicles, all on behalf of  
16 and for the benefit of DEFENDANTS.

17 **F. Wage Statement Violations**

18         37. California Labor Code Sections 226 and 226.2 require an employer to furnish its  
19 employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total  
20 hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all  
21 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is  
22 paid, (7) the name of the employee and only the last four digits of the employee’s social security  
23 number or an employee identification number other than a social security number, (8) the name  
24 and address of the legal entity that is the employer, (9) all applicable hourly rates in effect during  
25 the pay period and the corresponding number of hours worked at each hourly rate by the  
26 employee; (10) the total hours of compensable rest and recovery periods, the rate of compensation,  
27 and the gross wages paid for those periods during the pay period, and (11) the total hours of other  
28

1 nonproductive time, the rate of compensation, and the gross wages paid for that time during the  
2 pay period.

3 38. From time-to-time during the CALIFORNIA CLASS PERIOD, DEFENDANT  
4 furnished PLAINTIFF and the CALIFORNIA CLASS written wage statements that failed to  
5 accurately show (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units  
6 earned and any applicable piece-rate, (4) net wages earned, (5) all applicable hourly rates in effect  
7 during the pay period and the corresponding number of hours worked at each hourly rate by the  
8 employee; (6) the total hours of compensable rest and recovery periods, the rate of compensation,  
9 and the gross wages paid for those periods during the pay period, and (7) the total hours of other  
10 nonproductive time, the rate of compensation, and the gross wages paid for that time during the  
11 pay period.

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

15 40. As a result, DEFENDANTS issued PLAINTIFF and the CALIFORNIA CLASS  
16 with wage statements that violate Cal. Lab. Code §§ 226 and 226.2. Further, DEFENDANTS'  
17 violations are knowing and intentional, were not isolated or due to an unintentional payroll error  
18 due to clerical or inadvertent mistake.

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

20 41. 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 **H. Unlawful Deductions**

26 42. 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 43. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally  
4 required off-duty meal breaks to him and paid rest periods to him as required by the applicable  
5 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for his missed  
6 meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent him from  
7 being relieved of all of his duties for the legally required off-duty meal periods. Further,  
8 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday  
9 in which PLAINTIFF was required by DEFENDANT to work ten (10) hours of work. As a result,  
10 DEFENDANT’S failure to provide PLAINTIFFS with the legally required second off-duty meal  
11 period is evidenced by DEFENDANT’s business records. From time to time, and as a result of  
12 DEFENDANT not accurately recording all missed meal and rest periods, and failing to pay  
13 minimum wages due for all time worked and separate compensation for rest breaks, the wage  
14 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,  
15 Labor Code Section 226(a). Further, DEFENDANT failed to reimburse PLAINTIFF for all  
16 required business expenses including for the use of his personal cell phone. To date,  
17 DEFENDANT has yet to pay PLAINTIFF all of his wages due to him and all premiums due to  
18 him for missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages owed  
19 to him under California Labor Code Section 203. The amount in controversy for PLAINTIFF  
20 individually does not exceed \$75,000.

21 **THE CALIFORNIA CLASS**

22 44. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
23 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a Class  
24 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of all current and former non-exempt,  
25 exempt, exempt, piece-rate based, and/or commission-based employees employed by  
26 DEFENDANT in California (“CALIFORNIA CLASS”) at any time during the period beginning  
27 four (4) years prior to the filing of this Complaint and ending on the date as determined by the  
28

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

3 45. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
4 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
5 accordingly.

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

13 47. The members of the class are so numerous that joinder of all class members is  
14 impractical.

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

- 22 i. Whether DEFENDANTS maintained legally compliant meal period policies  
23 and practices;
- 24 ii. Whether DEFENDANTS maintained legally compliant rest period policies  
25 and practices;
- 26 iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA  
27 CLASS Members accurate premium payments for missed meal and rest  
28 periods;

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

20           49.   PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as  
21           a result of DEFENDANTS' conduct and actions alleged herein.

22           50.   PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has  
23           the same interests as the other members of the class.

24           51.   PLAINTIFF will fairly and adequately represent and protect the interests of the  
25           CALIFORNIA CLASS Members.

26           52.   PLAINTIFF retained able class counsel with extensive experience in class action  
27           litigation.

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



1           54. There is a strong community of interest among PLAINTIFF and the members of  
2 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are  
3 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries  
4 sustained.

5           55. The questions of law and fact common to the CALIFORNIA CLASS Members  
6 predominate over any questions affecting only individual members, including legal and factual  
7 issues relating to liability and damages.

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

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

23           57. Class treatment provides manageable judicial treatment calculated to bring an  
24 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of  
25 the conduct of DEFENDANTS.

26  
27 ///  
28

1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

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

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

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

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

19 Cal. Bus. & Prof. Code § 17203.

20 61. By the conduct alleged herein, DEFENDANT has engaged and continues to engage  
21 in a business practice which violates California law, including but not limited to, the applicable  
22 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code  
23 including Sections 201, 202, 203, 204, 206.5, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198  
24 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.  
25 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
26 constitute unfair competition, including restitution of wages wrongfully withheld.

27 62. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair  
28 in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or

1 substantially injurious to employees, and were without valid justification or utility for which this  
2 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California  
3 Business & Professions Code, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

28 ///

1 **SECOND CAUSE OF ACTION**

2 **Failure To Pay Minimum Wages**

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

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

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

8 74. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for  
9 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial  
10 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay  
11 minimum wages.

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

14 76. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
15 commission is the minimum wage to be paid to employees, and the payment of a less wage than  
16 the minimum so fixed is unlawful.

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

19 78. As set forth above, during the CLASS PERIOD, DEFENDANT maintained a  
20 uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA  
21 CLASS without regard to the correct amount of time they worked. As set forth herein,  
22 DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely  
23 payment of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

24 79. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
25 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
26 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF  
27 and the other members of the CALIFORNIA CLASS regarding minimum wage pay.

28 80. In committing these violations of the California Labor Code, DEFENDANT

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

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

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

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

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

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

1 consequences to them, and with the despicable intent of depriving them of their property and legal  
2 rights, and otherwise causing them injury in order to increase company profits at the expense of  
3 these employees.

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

15 **THIRD CAUSE OF ACTION**

16 **Failure To Pay Overtime Compensation**

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

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

19 87. 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 88. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for  
23 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial  
24 Welfare Commission requirements for DEFENDANTS' failure to properly compensate the  
25 members of the CALIFORNIA CLASS for all overtime worked, including, work performed in  
26 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek during the CLASS  
27 PERIOD.

28 89. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public

1 policy, an employer must timely pay its employees for all hours worked.

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

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

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

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

20 94. In committing these violations of the California Labor Code, DEFENDANT acted  
21 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of  
22 the California Labor Code, the Industrial Welfare Commission requirements and other applicable  
23 laws and regulations.

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

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



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

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

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

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

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

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

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

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

18 **FOURTH CAUSE OF ACTION**

19 **Failure To Provide Required Meal Periods**

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

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

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

26 104. During the CLASS PERIOD, DEFENDANT failed to provide all the legally  
27 required off-duty meal breaks to PLAINTIFF and the CALIFORNIA CLASS as required by the  
28 applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and

1 the CALIFORNIA CLASS did not prevent these employees from being relieved of all of their  
2 duties for the legally required off-duty meal periods. As a result of their rigorous work schedules,  
3 PLAINTIFF and the CALIFORNIA CLASS were often not fully relieved of duty by  
4 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide  
5 PLAINTIFF and the CALIFORNIA CLASS with legally required meal breaks prior to their fifth  
6 (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF  
7 and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without  
8 additional compensation and in accordance with DEFENDANT's strict corporate policy and  
9 practice.

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

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

18 **FIFTH CAUSE OF ACTION**

19 **Failure To Provide Required Rest Periods**

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

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

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

25 108. During the CLASS PERIOD, PLAINTIFF and the CALIFORNIA CLASS were  
26 also required to work in excess of four (4) hours without being provided ten (10) minute rest  
27 periods. Further, these employees were denied their first rest periods of at least ten (10) minutes  
28 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at

1 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,  
2 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours  
3 or more. PLAINTIFF and the CALIFORNIA CLASS were also not provided with one-hour  
4 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and the  
5 CALIFORNIA CLASS were periodically denied their proper rest periods by DEFENDANT and  
6 DEFENDANT's managers.

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

12 110. As a proximate result of the aforementioned violations, PLAINTIFF and the  
13 CALIFORNIA CLASS have been damaged in an amount according to proof at trial, and seek all  
14 wages earned and due, interest, penalties, expenses and costs of suit.

15 **SIXTH 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)**

19 111. 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 1. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
23 "accurate itemized" statement in writing showing: (1) Gross wages earned; (2) Total hours  
24 worked by the employee, except for any employee whose compensation is solely based on a salary  
25 and who is exempt from payment of overtime under subdivision (a) of Section 515 or any  
26 applicable order of the Industrial Welfare Commission; (3) The number of piece-rate units earned  
27 and any applicable piece rate if the employee is paid on a piece-rate basis; (4) All deductions,  
28 provided that all deductions made on written orders of the employee may be aggregated and

1 shown as one item; (5) Net wages earned; (6) The inclusive dates of the period for which the  
2 employee is paid.; (7) The name of the employee and his or her social security number, except  
3 that by January 1, 2008, only the last four digits of his or her social security number or an  
4 employee identification number other than a social security number may be shown on the itemized  
5 statement; (8) The name and address of the legal entity that is the employer, and (9) All applicable  
6 hourly rates in effect during the pay period and the corresponding number of hours worked at  
7 each hourly rate by the employee.

8         2.         During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF  
9 and the other members of the CALIFORNIA CLASS with complete and accurate wage statements  
10 which failed to accurately show, among other things, (1) Gross wages earned; (2) Total hours  
11 worked by the employee, (3) The number of piece-rate units earned and any applicable piece rate  
12 if the employee is paid on a piece-rate basis; (4) All deductions; (5) Net wages earned; and (6) all  
13 applicable hourly rates in effect during the pay period and the corresponding number of hours  
14 worked at each hourly rate.

15         3.         Further, during the CLASS PERIOD, DEFENDANTS also failed to provide  
16 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate  
17 wage statements in compliance with Cal. Labor Code Section 226.2, which failed to accurately  
18 show, among other things: (1) the total hours of compensable rest and recovery periods; and (2)  
19 the total hours of other nonproductive time, the rate of compensation for the nonproductive time  
20 and the gross wages paid for the nonproductive time during the applicable pay period.

21         4.         PLAINTIFFS and the members of the CALIFORNIA CLASS were injured by  
22 DEFENDANTS' violations in that they could not promptly and easily determine from the wage  
23 statement alone, the amount of gross or net wages paid, the total hours worked, the number pf  
24 piece-rate units earned and any applicable piece-rate, all applicable hourly rates in effect during  
25 the pay period and the corresponding number of hours worked at each hourly rate to the employee  
26 during the applicable pay period.

27         5.         DEFENDANTS violations of Cal. Labor Code § 226 and 226.2 were knowing and  
28 intentional in that DEFENDANTS willfully intended to issue wage statements that were out of

1 compliance with § 226 and 226.2.

2 112. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor  
3 Code § 226 and 226.2, causing injury and damages to the PLAINTIFF and the other members of  
4 the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended  
5 calculating the correct rates for the overtime worked and the amount of employment taxes which  
6 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.  
7 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover  
8 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation  
9 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period  
10 pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor  
11 Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more  
12 than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the  
13 CALIFORNIA CLASS herein).

14 **SEVENTH CAUSE OF ACTION**

15 **Failure To Pay Wages When Due**

16 **(Cal. Lab. Code §§ 203)**

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

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

20 114. Cal. Lab. Code § 200 provides, in relevant part, that:

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

28 115. Cal. Lab. Code § 201 provides, in relevant part, “that If an employer discharges an

1 employee, the wages earned and unpaid at the time of discharge are due and payable  
2 immediately.”

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

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

15 117. There was no definite term in PLAINTIFF’s or any CALIFORNIA CLASS  
16 Members’ employment contract.

17 118. Cal. Lab. Code § 203 provides, in relevant part, that:

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

24  
25 119. The employment of PLAINTIFF and many CALIFORNIA CLASS Members  
26 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

27 120. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the  
28 members of the CALIFORNIA CLASS whose employment has terminated and who have unpaid

1 minimum and/or overtime wages and/or missed meal and rest breaks without being paid the  
2 legally required penalties by DEFENDANT, PLAINTIFF demands up to thirty days of pay as  
3 penalty for not timely paying all wages due at time of termination for all employees who  
4 terminated employment during the CLASS PERIOD plus interest and statutory costs as allowed  
5 by law.

6 **EIGHTH CAUSE OF ACTION**

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

8 **(Cal. Lab. Code §§ 2802)**

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

10 121. 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.

13 122. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

20 123. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.  
21 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the  
22 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for  
23 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of  
24 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to  
25 using their personal cellular phones and personal vehicles all on behalf of and for the benefit of  
26 DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were  
27 required by DEFENDANTS to use their personal cell phones and personal vehicles to execute  
28 their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice



1 and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS  
2 for expenses resulting from using their personal cellular phones and personal vehicles for  
3 DEFENDANTS within the course and scope of their employment for DEFENDANTS. These  
4 expenses were necessary to complete their principal job duties. DEFENDANTS are estopped by  
5 DEFENDANTS' conduct to assert any waiver of their expectation. Although these expenses were  
6 necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA CLASS,  
7 DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the members of the  
8 CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and  
9 regulations of California.

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

14 **PRAYER FOR RELIEF**

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

17 1. On behalf of the CALIFORNIA CLASS:

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

28 2. On behalf of the CALIFORNIA CLASS:

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

DATED: January 20, 2023

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for PLAINTIFF

**DEMAND FOR A JURY TRIAL**

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

DATED: January 20, 2023

**ZAKAY LAW GROUP, APLC**

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

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