

**Summons  
(CITACION JUDICIAL)**

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

WEST COVINA AUTO RETAIL, INC., a California corporation, and  
Does 1 through 50, Inclusive,

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

LOUIS MESQUITA, an individual, on behalf of himself, and on behalf  
of all persons similarly situated,

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

**FILED**

Superior Court of California  
County of Los Angeles

JUL 26 2021

Sherril R. Carter, Executive Officer/Clerk of Court  
By Kristina Vargas Deputy  
Kristina Vargas

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):

Los Angeles Superior Court, Stanley Mosk Courthouse  
111 North Hill Street  
Los Angeles, CA 90012

CASE NUMBER  
(Número de caso)  
**215TCV27391**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

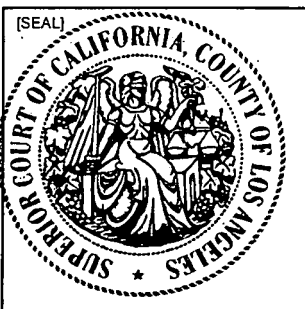
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291  
JCL Law Firm, APC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE:  
(Fecha) **JUL 26 2021**

**SHERRI R. CARTER**

Clerk, by Kristina Vargas, Deputy  
(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

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

07/27/2021

VIA FAX

**JUL 26 2021**

Sherri R. Carter, Executive Officer/Clerk of Court  
By *Kristina Vargas* Deputy  
Kristina Vargas

**JCL LAW FIRM, APC**

Jean-Claude Lapuyade (State Bar #248676)  
Eduardo Garcia (State Bar #290572)  
3990 Old Town Avenue, Suite C204  
San Diego, CA 92110  
Telephone: (619) 599-8292  
Facsimile: (619) 599-8291  
jlapuyade@jcl-lawfirm.com  
egarcia@jcl-lawfirm.com

**ZAKAY LAW GROUP, APLC**

Shani O. Zakay (State Bar #277924)  
Jackland K. Hom (State Bar #327243)  
3990 Old Town Avenue, Suite C204  
San Diego, CA 92110  
Telephone: (619) 255-9047  
Facsimile: (858) 404-9203  
shani@zakaylaw.com  
jackland@zakaylaw.com

Attorneys for Plaintiff

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

**21STCV27391**

LOUIS MESQUITA, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiff,

vs.

WEST COVINA AUTO RETAIL, INC., a California corporation, and Does 1 through 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, 1194 & 1198;
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 and 226.2;

07/27/2021



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- 7. FAILURE TO REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 8. FAILURE TO PAY SICK PAY AT THE CORRECT RATE OF PAY IN VIOLATION OF CAL. LAB. CODE § 246, *et seq.*;
- 9. FAILURE TO TIMELY PAY WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202, AND 203.

**DEMAND FOR JURY TRIAL**

Plaintiff LOUIS MESQUITA (“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 WEST COVINA AUTO RETAIL, INC. (“DEFENDANT” and/or “DEFENDANTS”) is a California corporation and at all relevant times mentioned owns and operates new and used car dealerships located in the County of Los Angeles, State of California. In addition to selling a variety of used and new automobiles, DEFENDANT also provides repair services.

2. 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, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

3. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each

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

4 4. PLAINTIFF has been employed by DEFENDANT in California since 2003, paid in part  
5 an hourly wage, piece-rate compensation, non-discretionary commissions and bonuses, and entitled to  
6 minimum wages, overtime pay and legally complaint meal and rest periods.

7 5. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined  
8 as all of DEFENDANT'S current and former non-exempt, piece-rate based, and/or commission-based  
9 employees employed in California ("CALIFORNIA CLASS") at any time during the period beginning  
10 four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court  
11 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of  
12 CALIFORNIA CLASS is under five million dollars (\$5,000,000.00).

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

## 24 THE CONDUCT

### 25 **A. Regular Rate Violation – Overtime and Sick Pay**

26 7. From time-to-time, during the CALIFORNIA CLASS PERIOD, DEFENDANT failed  
27 and continue to fail to accurately calculate and pay PLAINTIFF and the CALIFORNIA CLASS for  
28 their overtime hours worked and sick pay. As a result, PLAINTIFF and the CALIFORNIA CLASS

1 forfeited wages due to them for working overtime and for sick pay without compensation at the correct  
2 overtime and sick pay rates. DEFENDANT's uniform policy and practice to not pay the CALIFORNIA  
3 CLASS Members the correct overtime rate for all overtime worked and sick pay in accordance with  
4 applicable law is evidenced by DEFENDANT's business records.

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

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

16 10. In other instances, when calculating the regular rate of pay, in those pay periods where  
17 PLAINTIFF and the CALIFORNIA CLASS worked overtime and earned this non-discretionary bonus,  
18 DEFENDANT failed to (1) accurately include the non-discretionary bonus compensation into the  
19 regular rate of pay and/or (2) calculated all hours worked rather than just all non-overtime hours worked  
20 into the regular rate of pay in violation of *Alvarado v. Dart* (2018) 4 Cal.5th 542.

21 11. Management and supervisors described the bonus and commissions programs and  
22 commission compensation program to potential and new employees as part of the compensation  
23 package for new and used car salespersons including PLAINTIFF and the CALIFORNIA CLASS. As  
24 a matter of law, the incentive and commission compensation received by PLAINTIFFS and other  
25 CALIFORNIA CLASS members must be included and correctly calculated into the "regular rate of  
26 pay" for purposes of overtime compensation and sick pay. DEFENDANT's failure to do so has resulted  
27 in DEFENDANT's systematic underpayment of overtime compensation and sick pay to PLAINTIFF  
28 and other CALIFORNIA CLASS members. Specifically, California Labor Code Section 246 mandates

1 that paid sick time for non-employees shall be calculated in the same manner as the regular rate of pay  
2 for the workweek in which the non-exempt employee uses paid sick time, whether or not the employee  
3 actually works overtime in that workweek. DEFENDANT’S conduct, as articulated herein, by failing  
4 to include the incentive compensation as part of the “regular rate of pay” for purposes of sick pay  
5 compensation was in violation of Cal. Lab. Code § 246.

6 **B. Piece-Rate Violations**

7 12. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and the  
8 CALIFORNIA CLASS were paid in part on a piece-rate basis. In those instances where PLAINTIFF  
9 and the CALIFORNIA CLASS were paid in part on a piece-rate basis, PLAINTIFF and the  
10 CALIFORNIA CLASS were entitled to be separately compensated for all non-productive time at an  
11 hourly rate that is no less than the applicable minimum wage. Notwithstanding, in those instances  
12 where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a piece-rate basis,  
13 DEFENDANT failed to separately compensate PLAINTIFF and the CALIFORNIA CLASS for all  
14 non-productive time, including but not limited to, paid rest periods, at an hourly rate that is no less than  
15 the applicable minimum wage. As a result, PLAINTIFF and the CALIFORNIA CLASS forfeited  
16 minimum wages and overtime wages by DEFENDANT’S failure to separately compensate their non-  
17 productive time at an hourly rate that is no less than the applicable minimum wage.

18 **C. Meal and Rest Period Violations**

19 13. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor  
20 Codes, an employer shall not employ an employee for a work period of more than 5 hours per day  
21 without providing the employee with a meal period of not less than 30 minutes, except that if the total  
22 work period per day of the employee is no more than 6 hours, the meal period may be waived by mutual  
23 consent of both the employer and employee. An employer shall not employ an employee for a work  
24 period of more than 10 hours per day without providing the employee with a second meal period of not  
25 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal  
26 period may be waived by mutual consent of the employer and the employee only if the first meal period  
27 was not waived. If an employer fails to provide an employee with a mandated meal period, the employer  
28 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each

1 workday that the meal period is not provided.

2 14. From time-to-time during the CALIFORNIA CLASS PERIOD, as a result of  
3 understaffing and their rigorous work schedule, PLAINTIFF and other CALIFORNIA CLASS  
4 members were from time to time unable to take thirty (30) minute off duty meal breaks and were not  
5 fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS Members were  
6 from time to time required to perform work as ordered by DEFENDANT for more than five (5) hours  
7 during a shift without receiving an off-duty meal break. Further, DEFENDANT from time-to-time  
8 failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-duty meal period  
9 from time to time in which these employees were required by DEFENDANT to work ten (10) hours of  
10 work from time to time. PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited  
11 meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate  
12 policy and practice.

13 15. Further, pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT  
14 was required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked,  
15 meaning the time during which an employee is subject to the control of an employer, including all the  
16 time the employee suffered or permitted to work. DEFENDANT required PLAINTIFF and  
17 CALIFORNIA CLASS members to work without paying them for all the time they were under the  
18 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out  
19 during what was supposed to be PLAINTIFF's off duty meal break due to PLAINTIFF's rigorous work  
20 schedule and DEFENDANT's understaffing. PLAINTIFF was from time to time interrupted by work  
21 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. Further,  
22 DEFENDANT from time to time required PLAINTIFF and the other CALIFORNIA CLASS Members  
23 to carry cordless communication devices on them during meal breaks in order to answer to  
24 DEFENDANT's supervisors and customers for work-related tasks. As a result, the PLAINTIFF and  
25 other CALIFORNIA CLASS members forfeited minimum wage and overtime compensation by  
26 regularly working without their time being accurately recorded and without compensation at the  
27 applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay  
28 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by

1 DEFENDANT's business records.

2 16. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor  
3 Codes, an employer shall authorize and permit all employees to take a rest period, which so far as  
4 practical shall be in the middle of each work period. Generally, an employer must provide ten (10)  
5 minutes of paid rest for every four hours or major fraction thereof. If an employer fails to provide an  
6 employee a rest period, the employer shall pay the employee one (1) hour of pay at the employee's  
7 regular rate of pay for each workday that the rest period is not provided.

8 17. Additionally, during the CALIFORNIA CLASS PERIOD, PLAINTIFF and other  
9 CALIFORNIA CLASS members were from time-to-time required to work in excess of four (4) hours  
10 without being provided duty-free, uninterrupted, ten (10) minute rest period. Further, for the same  
11 reasons, these employees were denied their first rest periods of at least ten (10) minutes for some shifts  
12 worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes  
13 for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period  
14 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.  
15 DEFENDANT required PLAINTIFF and the other CALIFORNIA CLASS Members to remain on the  
16 premises during their rest periods. Further, DEFENDANT from time to time required PLAINTIFF and  
17 the other CALIFORNIA CLASS Members to carry cordless communication devices on them during  
18 rest periods in order to answer to DEFENDANT's supervisors and customers for work-related tasks.  
19 As a result, PLAINTIFF and the other CALIFORNIA CLASS Members were from time to time  
20 required to remain on the premises and on-call during their rest periods. PLAINTIFF and other  
21 CALIFORNIA CLASS Members were also not provided with one-hour wages in lieu thereof.

22 **D. Wage Statement Violations**

23 18. California Labor Code Sections 226 and 226.2 require an employer to furnish its  
24 employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours  
25 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5)  
26 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of  
27 the employee and only the last four digits of the employee's social security number or an employee  
28 identification number other than a social security number, (8) the name and address of the legal entity



1 that is the employer, (9) all applicable hourly rates in effect during the pay period and the corresponding  
2 number of hours worked at each hourly rate by the employee; (10) the total hours of compensable rest  
3 and recovery periods, the rate of compensation, and the gross wages paid for those periods during the  
4 pay period, and (11) the total hours of other nonproductive time, the rate of compensation, and the gross  
5 wages paid for that time during the pay period.

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

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

18 **E. Unreimbursed Business Expenses**

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

1           22. From time-to-time during the CLASS PERIOD, PLAINTIFF and the members of the  
2 CALIFORNIA CLASS were required by DEFENDANTS to use their own personal cellular phones  
3 and personal vehicles as a result of and in furtherance of their job duties as employees for  
4 DEFENDANTS. But for the use of their personal cell phones and personal vehicles, PLAINTIFF and  
5 the members of the CALIFORNIA CLASS could not complete their essential job duties.  
6 Notwithstanding, DEFENDANTS did not reimburse or indemnify PLAINTIFF or the members of the  
7 CALIFORNIA CLASS for the cost associated with the use of their personal cellular phones and  
8 personal vehicles for DEFENDANTS' benefit. As a result, in the course of their employment with  
9 DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS incurred unreimbursed  
10 business expenses which included, but were not limited to, costs related to the use of their personal  
11 cellular phones, gas and associated vehicle expenses, all on behalf of and for the benefit of  
12 DEFENDANTS.

13 **F. Failure to Pay Wages When Due**

14           23. As a result of the aforementioned conduct during the PAGA PERIOD and CLASS  
15 PERIOD, DEFENDANTS willfully failed to pay PLAINTIFF the CALIFORNIA CLASS and other  
16 AGGRIEVED EMPLOYEES all wages due and owed by the times set forth by Labor Code §§ 201,  
17 202, and 204.

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

20 **JURISDICTION AND VENUE**

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

25           26. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections  
26 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained  
27 offices and facilities in this County and/or conducts substantial business in this County, and (ii)  
28 committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA

1 CLASS and CALIFORNIA LABOR SUB-CLASS.

2 **THE CALIFORNIA CLASS**

3 27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
4 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a Class Action,  
5 pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all of  
6 DEFENDANT'S current and former non-exempt, piece-rate based, and/or commission-based  
7 employees employed in California (the "CALIFORNIA CLASS") at any time during the period  
8 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by  
9 the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim  
10 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

1           31.     At no time during the CALIFORNIA CLASS PERIOD was the compensation for any  
2 member of the CALIFORNIA CLASS properly recalculated so as to compensate the employee for all  
3 minimum and overtime wages due and missed meal and rest premiums owed, as required by California  
4 Labor Code.

5           32.     The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA CLASS  
6 Members is impracticable.

7           33.     DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
8 California law by:

9                 (a)     Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§  
10 17200, et seq. (the "UCL"), by unlawfully, unfairly and/or deceptively having in place company  
11 policies, practices and procedures that uniformly miscalculated overtime compensation and thereby,  
12 under compensated PLAINTIFF and the members of the CALIFORNIA CLASS;

13                 (b)     Committing an act of unfair competition in violation of the UCL, by violating  
14 Cal. Lab. Code §§ 510, et seq., by failing to pay the correct rate of pay for overtime pay to the  
15 PLAINTIFF and the members of the CALIFORNIA CLASS, and retaining the unpaid overtime to the  
16 benefit of DEFENDANT;

17                 (c)     Committing an act of unfair competition in violation of the California Unfair  
18 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, et seq., by failing to provide PLAINTIFF and the  
19 other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty  
20 (30) minute meal breaks and the legally required off duty rest breaks; and,

21                 (d)     Committing an act of unfair competition in violation of the UCL, by violating  
22 Cal. Lab. Code §§ 1194, 1197 & 1197.1, by unlawfully, unfairly and deceptively having in place  
23 company policies, practices and procedures that uniformly denied PLAINTIFF and the members of the  
24 CALIFORNIA CLASS the correct minimum wages and otherwise violated applicable law.

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

27                 (a)     The persons who comprise the CALIFORNIA CLASS are so numerous that the  
28 joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the

1 parties and the Court;

2 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
3 raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every  
4 member of the CALIFORNIA CLASS;

5 (c) The claims of the representative PLAINTIFF are typical of the claims of each  
6 member of the CALIFORNIA CLASS. PLAINTIFF was subjected to the DEFENDANT's deceptive  
7 practice and policy which failed to pay minimum and overtime wages due and failed to provide the  
8 legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically  
9 underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic  
10 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the  
11 CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive,  
12 unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and,

13 (d) The representative PLAINTIFF will fairly and adequately represent and protect  
14 the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced  
15 in Class Action litigation. There are no material conflicts between the claims of the representative  
16 PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification  
17 inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all  
18 CALIFORNIA CLASS Members.

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

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

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

27 2) Adjudication with respect to individual members of the CALIFORNIA  
28 CLASS which would as a practical matter be dispositive of interests of the other members not party to

1 the adjudication or substantially impair or impede their ability to protect their interests.

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

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

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

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

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

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

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

1                   3)     In the context of wage litigation because a substantial number of  
2 individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of  
3 retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or  
4 with a subsequent employer, the Class Action is the only means to assert their claims through a  
5 representative; and,

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

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

12                   (a)     The questions of law and fact common to the CALIFORNIA CLASS  
13 predominate over any question affecting only individual CALIFORNIA CLASS Members because the  
14 DEFENDANT’s employment practices are uniform and systematically applied with respect to the  
15 CALIFORNIA CLASS;

16                   (b)     A Class Action is superior to any other available method for the fair and efficient  
17 adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of  
18 employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid  
19 asserting their rights individually out of fear of retaliation or adverse impact on their employment;

20                   (c)     The members of the CALIFORNIA CLASS are so numerous that it is impractical  
21 to bring all members of the CALIFORNIA CLASS before the Court;

22                   (d)     PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to  
23 obtain effective and economic legal redress unless the action is maintained as a Class Action;

24                   (e)     There is a community of interest in obtaining appropriate legal and equitable  
25 relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining  
26 adequate compensation for the damages and injuries which DEFENDANT’s actions have inflicted  
27 upon the CALIFORNIA CLASS;

28                   (f)     There is a community of interest in ensuring that the combined assets of

1 DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for  
2 the injuries sustained;

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

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

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

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

16 **THE CALIFORNIA LABOR SUB-CLASS**

17 38. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and  
18 Ninth Causes of Action on behalf of a California sub-class, defined as all members of the  
19 CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California (the  
20 "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to the filing  
21 of the complaint and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-  
22 CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the  
23 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars  
24 (\$5,000,000.00).

25 39. DEFENDANT, as a matter of company policy, practice and procedure, and in violation  
26 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and  
27 the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a  
28 practice whereby DEFENDANT failed to correctly calculate overtime wages due for all time worked



1 by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, even though  
2 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted  
3 or suffered to permit this work. DEFENDANT has uniformly denied these CALIFORNIA LABOR  
4 SUB-CLASS Members wages to which these employees were entitled in order to unfairly cheat the  
5 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the  
6 CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-  
7 CLASS PERIOD should be adjusted accordingly.

8 40. DEFENDANT maintains records from which the Court can ascertain and identify by  
9 name and job title, each of DEFENDANT's employees who have been systematically, intentionally  
10 and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein  
11 alleged. PLAINTIFF will seek leave to amend the complaint to include any additional job titles of  
12 similarly situated employees when they have been identified.

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

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

17 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay all  
18 minimum and overtime wage compensation due to members of the CALIFORNIA LABOR SUB-  
19 CLASS in violation of the California Labor Code and California regulations and the applicable  
20 California Wage Order;

21 (b) Whether DEFENDANT failed to provide PLAINTIFF and the other members of  
22 the CALIFORNIA LABOR SUB-CLASS with the legally required meal and rest periods;

23 (c) Whether DEFENDANT failed to provide PLAINTIFF and the other members of  
24 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;

25 (d) Whether DEFENDANT has engaged in unfair competition by the above listed  
26 conduct;

27 (e) The proper measure of damages and penalties owed to the members of the  
28 CALIFORNIA LABOR SUB-CLASS; and



1 (f) Whether DEFENDANT’s conduct was willful.

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

4 (a) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the  
5 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing  
6 showing the corresponding correct amount of wages earned by the employee, the total amount of hours  
7 worked, and the correct legal entity that was their employer;

8 (b) Violating Cal. Lab. Code §§ 510, et seq., by failing to pay the PLAINTIFF and  
9 the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for a workday  
10 longer than eight (8) hours and a workweek longer than forty (40) hours, for which DEFENDANT is  
11 liable pursuant to Cal. Lab. Code § 1194;

12 (c) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 et seq., by failing to accurately  
13 pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct  
14 minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

15 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF  
16 and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted  
17 thirty (30) minute meal breaks and the legally required off duty rest breaks; and,

18 (e) Violating Cal. Lab. Code § 2802, by failing to reimburse and indemnify  
19 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS for required business  
20 expenses they incurred in direct consequence of discharging their duties on behalf of DEFENDANTS.

21 (f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an  
22 employee is discharged or quits from employment, the employer must pay the employee all wages due  
23 without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner  
24 required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have  
25 terminated their employment.

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

28 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so

1 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and  
2 the disposition of their claims as a class will benefit the parties and the Court;

3 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
4 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply  
5 uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;

6 (c) The claims of the representative PLAINTIFF are typical of the claims of each  
7 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the  
8 CALIFORNIA LABOR SUB-CLASS, is subject to the DEFENDANT's practice and policy as  
9 described herein. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment  
10 practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are  
11 similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
12 misconduct engaged in by DEFENDANT; and,

13 (d) The representative PLAINTIFF will fairly and adequately represent and protect  
14 the interest of the CALIFORNIA LABOR SUB-CLASS and has retained counsel who are competent  
15 and experienced in Class Action litigation. There are no material conflicts between the claims of the  
16 representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would  
17 make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will  
18 vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

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

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

27 2) Adjudication with respect to individual members of the CALIFORNIA  
28 LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other

1 members not party to the adjudication or substantially impair or impede their ability to protect their  
2 interests.

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

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

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

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

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

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

27 3) In the context of wage litigation because a substantial number of  
28 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of

1 fear of retaliation by DEFENDANT, which may adversely affect an individual's job with  
2 DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims  
3 through a representative; and,

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

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

10                   (a)     The questions of law and fact common to the CALIFORNIA LABOR SUB-  
11 CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS  
12 Members;

13                   (b)     A Class Action is superior to any other available method for the fair and efficient  
14 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the  
15 context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-  
16 CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse  
17 impact on their employment;

18                   (c)     The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that  
19 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

20                   (d)     PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will  
21 not be able to obtain effective and economic legal redress unless the action is maintained as a Class  
22 Action;

23                   (e)     There is a community of interest in obtaining appropriate legal and equitable  
24 relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining  
25 adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted  
26 upon the CALIFORNIA LABOR SUB-CLASS;

27                   (f)     There is a community of interest in ensuring that the combined assets of  
28 DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR

1 SUB-CLASS for the injuries sustained;

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

5 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily  
6 ascertainable from the business records of DEFENDANT; and,

7 (i) Class treatment provides manageable judicial treatment calculated to bring a  
8 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the  
9 conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

10 **FIRST CAUSE OF ACTION**

11 **For Unlawful Business Practices**

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

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

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

16 48. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code §  
17 17021.

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

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

1 Cal. Bus. & Prof. Code § 17203.

2 50. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a  
3 business practice which violates California law, including but not limited to, the applicable Industrial  
4 Wage Order(s), the California Code of Regulations and the California Labor Code including Sections  
5 201, 202, 203, 204, 206.5, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198 & 2802, for which this  
6 Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203  
7 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including  
8 restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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



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

8   **SECOND CAUSE OF ACTION**

9   **For Failure to Pay Minimum Wages**

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

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

12   **and Against All Defendants)**

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

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

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

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

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

27           67. As set forth above, during the CALIFORNIA LABOR SUB-CLASS PERIOD,  
28 DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of

1 the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they worked.  
2 As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and intentionally  
3 deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA  
4 LABOR SUB-CLASS.

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

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

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

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

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

25 73. DEFENDANT knew or should have known that PLAINTIFF and the other members of  
26 the CALIFORNIA LABOR SUB-CLASS were under compensated for their time worked.  
27 DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance, to  
28 not pay employees for their labor as a matter of uniform company policy, practice and procedure, and

1 DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other  
2 members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time  
3 worked.

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

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

22 **THIRD CAUSE OF ACTION**

23 **For Failure to Pay Overtime Compensation**

24 **[Cal. Lab. Code §§ 510, 1194 and 1198]**

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

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

1           77.     PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring  
2 a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the  
3 Industrial Welfare Commission requirements for DEFENDANTS' failure to properly compensate the  
4 members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked, including, work  
5 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek during  
6 the CALIFORNIA LABOR SUB-CLASS PERIOD.

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

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

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

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

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

26           83.     In committing these violations of the California Labor Code, DEFENDANT acted in an  
27 illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California  
28 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and

1 regulations.

2 84. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
3 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive full  
4 compensation for all overtime worked.

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

13 86. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other  
14 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than they were  
15 entitled to, constituting a failure to pay all earned wages.

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

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

28 89. DEFENDANT knew or should have known that PLAINTIFF and the other members of



1 the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime worked.  
2 DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance, to  
3 not pay employees for their labor as a matter of uniform company policy, practice and procedure, and  
4 DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other  
5 members of the CALIFORNIA LABOR SUB-CLASS the applicable overtime rate.

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

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

5 92. 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 this  
7 Complaint.

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

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

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

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1 **FIFTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 226.7 & 512]**

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

5 96. 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 this  
7 Complaint.

8 97. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the  
9 CALIFORNIA LABOR SUB-CLASS were also required to work in excess of four (4) hours without  
10 being provided ten (10) minute rest periods. Further, these employees were denied their first rest  
11 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first  
12 and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight  
13 (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of  
14 ten (10) hours or more. PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS were also not  
15 provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF  
16 and the CALIFORNIA LABOR SUB-CLASS were periodically denied their proper rest periods by  
17 DEFENDANT and DEFENDANT's managers.

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

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

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1 **SIXTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 226 and 226.2]**

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

5 100. 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 this  
7 Complaint.

8 101. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
9 “accurate itemized” statement in writing showing: (1) Gross wages earned; (2) Total hours worked by  
10 the employee, except for any employee whose compensation is solely based on a salary and who is  
11 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the  
12 Industrial Welfare Commission; (3) The number of piece-rate units earned and any applicable piece  
13 rate if the employee is paid on a piece-rate basis; (4) All deductions, provided that all deductions made  
14 on written orders of the employee may be aggregated and shown as one item; (5) Net wages earned;  
15 (6) The inclusive dates of the period for which the employee is paid,; (7) The name of the employee  
16 and his or her social security number, except that by January 1, 2008, only the last four digits of his or  
17 her social security number or an employee identification number other than a social security number  
18 may be shown on the itemized statement; (8) The name and address of the legal entity that is the  
19 employer, and (9) All applicable hourly rates in effect during the pay period and the corresponding  
20 number of hours worked at each hourly rate by the employee.

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

28 103. Further, during the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANTS



1 also failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
2 with complete and accurate wage statements in compliance with Cal. Labor Code Section 226.2, which  
3 failed to accurately show, among other things: (1) the total hours of compensable rest and recovery  
4 periods; and (2) the total hours of other nonproductive time, the rate of compensation for the  
5 nonproductive time and the gross wages paid for the nonproductive time during the applicable pay  
6 period.

7 104. PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS were  
8 injured by DEFENDANTS' violations in that they could not promptly and easily determine from the  
9 wage statement alone, the amount of gross or net wages paid, the total hours worked, the number of  
10 piece-rate units earned and any applicable piece-rate, all applicable hourly rates in effect during the pay  
11 period and the corresponding number of hours worked at each hourly rate to the employee during the  
12 applicable pay period.

13 105. DEFENDANTS violations of Cal. Labor Code § 226 and 226.2 were knowing and  
14 intentional in that DEFENDANTS willfully intended to issue wage statements that were out of  
15 compliance with § 226 and 226.2.

16 106. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §  
17 226 and 226.2, causing injury and damages to the PLAINTIFF and the other members of the  
18 CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the  
19 correct rates for the overtime worked and the amount of employment taxes which were not properly  
20 paid to state and federal tax authorities. These damages are difficult to estimate. Therefore,  
21 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover  
22 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred,  
23 and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab.  
24 Code § 226, and all other damages and penalties available pursuant to Labor Code § 226.2(a)(6), all in  
25 an amount according to proof at the time of trial (but in no event more than four thousand dollars  
26 (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein.

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1 **SEVENTH CAUSE OF ACTION**

2 **For Failure to Reimburse Employees for Required Expenses**

3 **[Cal. Lab. Code § 2802]**

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

5 107. 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 this  
7 Complaint.

8 108. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

14 109. From time-to-time during the LABOR CLASS PERIOD, DEFENDANTS violated Cal.  
15 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the  
16 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for  
17 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of the  
18 CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using  
19 their personal cellular phone and personal vehicle all on behalf of and for the benefit of  
20 DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were  
21 required by DEFENDANTS to use their personal cell phones to execute their essential job duties on  
22 behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not  
23 reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from  
24 using their personal cellular phones and personal vehicles for DEFENDANTS within the course and  
25 scope of their employment for DEFENDANTS. These expenses were necessary to complete their  
26 principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of  
27 their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the  
28 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse

1 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer is  
2 required to do under the laws and regulations of California.

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

7 **EIGHTH CAUSE OF ACTION**

8 **FAILURE TO PAY SICK PAY AT THE CORRECT RATE OF PAY**

9 **(Cal. Lab. Code § 246, *et seq.*)**

10 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**  
11 **DEFENDANT)**

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

15 112. Cal. Labor Code Sections 246(l)(1) mandates that “[p]aid sick time for nonexempt  
16 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which  
17 the employee uses paid sick time, whether or not the employee actually works overtime in that  
18 workweek.”

19 113. From time-to-time, during the PLAINTIFF and other members of the CALIFORNIA  
20 LABOR SUB-CLASS were compensated at an hourly rate plus either non-discretionary incentive pay.  
21 As a matter of law, the incentive compensation and/or piece-rate compensation received by  
22 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS must be included in the  
23 “regular rate of pay.”

24 114. From time-to-time during the CLASS PERIOD, in those pay periods where PLAINTIFF  
25 and other members of the CALIFORNIA LABOR SUB-CLASS earned hourly compensation and either  
26 non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to properly  
27 calculate the regular rate of pay for purposes of compensating paid sick time by omitting non-  
28 discretionary incentive pay from the regular rate of pay.

1 115. DEFENDANT's uniform policy and practice of omitting non-discretionary incentive  
2 pay and/or piece-rate pay from the regular rate of pay for purposes of paying paid sick pay, resulted  
3 in the underpayment of sick pay wages to PLAINTIFF and other members of the CALIFORNIA  
4 LABOR SUB-CLASS. PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS  
5 therefore request recovery of all unpaid wages, including sick pay wages, according to proof, interest,  
6 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum  
7 as provided by the California Labor Code and/or other applicable statutes. To the extent sick pay is  
8 determined to be owed to other members of the CALIFORNIA LABOR SUB-CLASS who have  
9 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202,  
10 and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code §  
11 203, which penalties are sought herein on behalf of other members of the CALIFORNIA LABOR  
12 SUB-CLASS. DEFENDANT'S conduct as alleged herein was willful, intentional and not in good  
13 faith. Further, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS are  
14 entitled to seek and recover statutory costs.

15 **NINTH CAUSE OF ACTION**

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

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

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

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

22 117. Cal. Lab. Code § 200 provides, in relevant part, that:

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



1 personally by the person demanding payment.

2 118. Cal. Lab. Code § 201 provides, in relevant part, “that If an employer discharges an  
3 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

4 119. Cal. Lab. Code § 202 provides, in relevant part, that:

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

15 120. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR SUB-  
16 CLASS Members’ employment contract.

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

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

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

27 123. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of  
28 the CALIFORNIA LABOR SUB-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 legally  
2 required penalties by DEFENDANT, PLAINTIFF demands up to thirty days of pay as penalty for not  
3 timely paying all wages due at time of termination for all employees who terminated employment  
4 during the CALIFORNIA LABOR SUB-CLASS PERIOD plus interest and statutory costs as allowed  
5 by law.

6 **PRAYER FOR RELIEF**

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

9 1. On behalf of the CALIFORNIA CLASS:

10 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA  
11 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

12 B) An order temporarily, preliminarily and permanently enjoining and restraining  
13 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

14 C) An order requiring DEFENDANT to pay all sums unlawfully withheld from  
15 compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

16 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund  
17 for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other  
18 members of the CALIFORNIA CLASS.

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

20 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth,  
21 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action  
22 pursuant to Cal. Code of Civ. Proc. § 382;

23 B) Compensatory damages, according to proof at trial, including compensatory  
24 damages for minimum wages and overtime wage compensation due PLAINTIFF and the other  
25 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR  
26 SUB-CLASS PERIOD plus interest thereon at the statutory rate;

27 C) Meal and rest period compensation pursuant to California Labor Code Section  
28 226.7 and the applicable IWC Wage Order;

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

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

8 3. On all claims:

- 9 A) An award of interest, including prejudgment interest at the legal rate;
- 10 B) Such other and further relief as the Court deems just and equitable; and,
- 11 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,  
12 including, but not limited to, pursuant to Labor Code §226, §1194, and/or §2802.

13  
14 Dated: July 16, 2021

Respectfully Submitted,  
JCL LAW FIRM, A.P.C.

15  
16 By:   
17 Jean-Claude Lapuyade  
Attorneys for Plaintiff

18 **DEMAND FOR JURY TRIAL**

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

20  
21 Dated: July 16

Respectfully Submitted,  
JCL LAW FIRM, A.P.C.

22  
23 By:   
24 Jean-Claude Lapuyade  
Attorneys for Plaintiff

