

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

SUMMIT PIZZA WEST, LLC, a California limited liability company, SUMMIT RESTAURANT GROUP, LLC, a Missouri limited liability company and DOES 1 through 50, Inclusive;

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

CHRISTIAN SOLTERO, an individual, on behalf of herself, and on behalf of all persons similarly situated,

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

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

01/11/2021 at 04:41:24 PM

Clerk of the Superior Court
By Erika Engel, Deputy Clerk

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court, Hall of Justice
330 W. Broadway Street
San Diego, CA 92101

CASE NUMBER: 37-2021-00001288-CU-OE-CTL
(Número del Caso):

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: 01/12/2021

(Fecha)

Clerk, by _____

(Secretario)

E. Engel
E. Engel

_____, Deputy

(Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served

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

[SEAL]



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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Erika Engel, Deputy Clerk

10 **SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF SAN DIEGO**

12 CHRISTIAN SOLTERO, an individual, on
behalf of herself, and on behalf of all persons
13 similarly situated,

14 Plaintiffs,

15 vs.

16 SUMMIT PIZZA WEST, LLC, a California
limited liability company, SUMMIT
17 RESTAURANT GROUP, LLC, a Missouri
limited liability company and DOES 1
18 through 50, Inclusive;

19 Defendants.

Case No. 37-2021-00001288-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LABOR CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR JURY TRIAL

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

4 **THE PARTIES**

5 1. Defendant SUMMIT PIZZA WEST, LLC, is a California limited liability company
6 (“SUMMIT”), registered with the California Secretary of State to do business in the State of California,
7 that at all relevant times mentioned herein conducted and continues to conduct substantial business in
8 the state of California, county of San Diego.

9 2. Defendant SUMMIT RESTAURANT GROUP, LLC, is a Missouri limited liability
10 company (“SUMMIT GROUP”), registered with the California Secretary of State to do business in the
11 State of California, that at all relevant times mentioned herein conducted and continues to conduct
12 substantial business in the state of California, county of San Diego.

13 3. According to its articles of incorporation filed with the Secretary of State for the State of
14 California, SUMMIT and SUMMIT GROUP own, operate and develop Taco Bell, KFC, Long John
15 Silver, A&W and Pizza Hut franchised or licensed, retail foodservice outlets, and other concepts
16 expressly approved in writing by YUM! Brands, Inc., or one of its wholly owned subsidiaries.

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

26 5. The agents, servants and/or employees of the DEFENDANTS and each of them acting on
27 behalf of the DEFENDANT acted within the course and scope of its authority as the agent, servant
28



1 and/or employee of the DEFENDANT, and personally participated in the conduct alleged herein on
2 behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the acts of each
3 of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are jointly and
4 severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a proximate result
5 of the conduct of the DEFENDANTS' agents, servants and/or employees.

6 6. DEFENDANTS were the joint employers of PLAINTIFF as evidenced by the contracts
7 signed by DEFENDANTS and PLAINTIFF, work performed by PLAINTIFF for DEFENDANTS,
8 documents issued by DEFENDANTS to PLAINTIFF, including but not limited to, wage statements
9 and IRS Form W-2, and DEFENDANTS are therefore are jointly and severally liable to PLAINTIFF
10 and those similarly situated, for the loss sustained as a proximate result of the conduct of the
11 DEFENDANTS' agents, servants and/or employees.

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

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

22 9. PLAINTIFF was employed by DEFENDANTS from August 2015 until June 2020 as a
23 non-exempt employee at one of DEFENDANTS' owned, operated, franchised or licensed, retail
24 foodservice outlets located in San Diego County, paid on an hourly basis, entitled to certain non-
25 discretionary incentive compensation, bonuses, overtime pay and legally compliant meal and rest
26 periods between.

27 10. PLAINTIFF brings this Class Action on behalf of himself and on behalf of all of
28 DEFENDANTS current and former non-exempt California employees (the "CALIFORNIA CLASS")



1 at any time between at any time between April 6, 2016 on a date determined by the Court (the “CLASS
2 PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA CLASS members is
3 under five million dollars (\$5,000,000.00).

4 11. PLAINTIFF evokes the tolling permitted pursuant to the California State Judicial Counsel
5 amended Rule of Court, Emergency Rule Number 9, which tolled the statute of limitation and statutes
6 of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of limitation and repose for civil
7 causes of action that are 180 days or less, or (b) October 1, 2020 for statutes of limitation and repose
8 for civil causes of action that exceed 180 days. To the extent any other equitable tolling statute, doctrine
9 or law operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS
10 PERIOD should be adjusted accordingly.

11 12. PLAINTIFF brings this Class Action on behalf of himself and on behalf of the
12 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
13 incurred during the CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice which
14 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally complaint meal and rest
15 periods and/or provide an additional hour of pay at the regular rate of compensation in *lieu* thereof in
16 violation of California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare
17 Commission Wage Order, (2) failed to accurately pay PLAINTIFF and the CALIFORNIA CLASS for
18 all hours worked in violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and
19 1197.1, (3) failed to reimburse PLAINTIFF and the CALIFORNIA CLASS for all required business
20 expenses, including but not limited to cell phone, gas and vehicle expenses in violation of California
21 Labor Code Section 2802, and (4) failed to provide accurate itemized wage statements in violation of
22 California Labor Code Sections 226 and 226.3.

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

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



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

3 **JURISDICTION AND VENUE**

4 15. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is
6 brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
7 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

8 16. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
9 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,
10 and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities
11 in this County and/or conducts substantial business in this County, and (ii) committed the wrongful
12 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

13 **THE CONDUCT**

14 17. In violation of the applicable sections of the California Labor Code and the requirements
15 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
16 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
17 complaint meal and rest period, failed to accurately compensate PLAINTIFF and the other members of
18 the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other
19 members of the CALIFORNIA CLASS for all time worked, failed to reimburse PLAINTIF and the
20 CALIFORNIA CLASS for required business expenses, and failed to issue to PLAINTIFF and the
21 members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other
22 things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time
23 worked at each hourly rate. DEFENDANTS’ uniform policies and practices are intended to
24 purposefully avoid the accurate and full payment for all time worked as required by California law
25 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
26 comply with the law.

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1 **A. Meal Period Violations**

2 18. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
3 required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked, meaning
4 the time during which an employee is subject to the control of an employer, including all the time the
5 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD, as a result
6 of their overburdened work requirements, inadequate staffing and not being relived of cordless
7 communication devices during their shifts, DEFENDANTS required PLAINTIFF and CALIFORNIA
8 CLASS members to work without paying them for all the time they were under DEFENDANTS'
9 control. Specifically, DEFENDANTS required PLAINTIFF to work while clocked out during what
10 was supposed to be PLAINTIFF's off-duty meal break. DEFENDANT required PLAINTIFF and
11 members of the CALIFORNIA CLASS to carry cordless communication devices throughout their
12 works shifts and to remain at the ready to respond to work related issues and tasks communicated
13 through the cordless communication device. DEFENDANT did not have a policy or practice to relieve
14 PLAINTIFF and the members of the CALIFORNIA CLASS of their communication device during
15 what was supposed to be an off-duty meal period. PLAINTIFF was from time to time interrupted by
16 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.
17 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the
18 PLAINTIFF and other CALIFORNIA CLASS members forfeited minimum wage and overtime wages
19 by regularly working without their time being accurately recorded and without compensation at the
20 applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay
21 PLAINTIFF and other CALIFORNIA CLASS members for all time worked is evidenced by
22 DEFENDANTS' business records.

23 19. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
24 schedules, inadequate staffing and not being relieved of cordless communication devices, PLAINTIFF
25 and other CALIFORNIA CLASS members were from time to time unable to take thirty (30) minute
26 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
27 CALIFORNIA CLASS members were required from time to time to perform work as ordered by
28 DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break.

1 Further, DEFENDANTS from time to time failed to provide PLAINTIFF and CALIFORNIA CLASS
2 members with a second off-duty meal period for some workdays in which these employees were
3 required by DEFENDANTS to work ten (10) hours of work from time to time. The nature of the work
4 performed by the PLAINTIFF and the members of the CALIFORNIA CLASS does not qualify for
5 limited and narrowly construed “on-duty” meal period exception. PLAINTIFF and other members of
6 the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
7 accordance with DEFENDANTS’ strict corporate policy and practice.

8 **B. Rest Period Violations**

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

15 21. From time-to-time during the CLASS PERIOD, as a result of their overburdened work
16 requirements, inadequate staffing and not being relieved of cordless communication devices during their
17 shifts, PLAINTIFF and other CALIFORNIA CLASS members were also required from time to time to
18 work in excess of four (4) hours without being provided duty-free ten (10) minute rest periods. Further,
19 these employees were denied their first duty-free rest periods of at least ten (10) minutes for some shifts
20 worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least
21 ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
22 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
23 or more from time to time. DEFENDANT required PLAINTIFF and members of the CALIFORNIA
24 CLASS to carry cordless communication devices and to remain at the ready to respond to work related
25 issues and tasks communicated through the cordless communication device throughout their works
26 shifts. DEFENDANT did not have a policy or practice to relieve PLAINTIFF and the members of the
27 CALIFORNIA CLASS of their communication device during what was supposed to be an off-duty rest
28



1 period. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with one-hour
2 wages in lieu thereof.

3 **C. Overtime Regular Rate Violation**

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

11 23. State law provides that employees must be paid overtime at one-and-one-half times their
12 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at
13 an hourly rate plus flat-sum incentive pay that was tied to specific elements of an employee's
14 performance.

15 24. The second component of PLAINTIFF'S and other CALIFORNIA CLASS members'
16 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and
17 other CLASS MEMBERS incentive wages based on their performance for DEFENDANTS. The flat-
18 sum non-discretionary incentive program provided all employees paid on an hourly basis with incentive
19 compensation when the employees met the various performance goals set by DEFENDANTS. These
20 incentive payments are identified as "CAR ALLOW NT" and "PER DIEM NT" in the wage statements
21 issued by DEFENDANTS to PLAINTIFF and the other CALIFORNIA CLASS members.

22 25. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
23 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime and earned this non-
24 discretionary incentive compensation, DEFENDANTS failed to accurately include the non-
25 discretionary incentive compensation as part of the employees' "regular rate of pay" and/or calculated
26 all hours worked rather than just all non-overtime hours worked. Management and supervisors
27 described the incentive/bonus program to potential and new employees as part of the compensation
28 package. As a matter of law, the incentive compensation received by PLAINTIFF and other



1 CALIFORNIA CLASS members must be included in the “regular rate of pay.” The failure to do so
2 has resulted in a systematic underpayment of overtime compensation to PLAINTIFF and other
3 CALIFORNIA CLASS members by DEFENDANTS.

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

13 **D. Meal Period Premium Violations**

14 27. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to
15 fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA CLASS
16 their missed meal and rest period premiums. As a result, PLAINTIFF and the other CALIFORNIA
17 CLASS members forfeited wages due them for their missed meal and rest periods without
18 compensation at the correct missed meal and rest period rates. DEFENDANTS’ uniform policy and
19 practice to not pay the CALIFORNIA CLASS members the correct rate for all missed meal and rest
20 period premium payment in accordance with applicable law is evidenced by DEFENDANTS’ business
21 records.

22 28. State law provides that employees must be paid premium hour of pay at the employee’s
23 “regular rate of compensation” for each workday that the meal or rest period is not provided.
24 PLAINTIFF and other CALIFORNIA CLASS members were compensated at an hourly rate plus a
25 non-discretionary incentive pay that was tied to specific elements of an employee’s performance. These
26 non-discretionary incentive payments are identified as “CAR ALLOW NT” and “PER DIEM NT” ” in
27 the wage statements issued by DEFENDANTS to PLAINTIFF and the other CALIFORNIA CLASS
28 members.



1 29. The second component of PLAINTIFF’s and other CALIFORNIA CLASS members’
2 compensation was DEFENDANTS’ non-discretionary incentive program that paid PLAINTIFF and
3 other members of the CALIFORNIA CLASS incentive wages based on their performance for
4 DEFENDANTS. The non-discretionary incentive program provided all employees paid on an hourly
5 basis with incentive compensation when the employees met the various performance goals set by
6 DEFENDANTS. However, when calculating the regular rate of pay in order to pay missed rest and
7 meal period premiums to PLAINTIFF and other CALIFORNIA CLASS members, DEFENDANTS
8 failed to include the incentive compensation as part of the employees’ “regular rate of compensation”
9 for purposes of calculating missed rest and meal period premiums. Management and supervisors
10 described the incentive program to potential and new employees as part of the compensation package.
11 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
12 CLASS members must be included in the “regular rate of compensation.” The failure to do so has
13 resulted in a systematic underpayment of premium pay for missed meal and rest periods to PLAINTIFF
14 and other CALIFORNIA CLASS members by DEFENDANTS.

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

24 **E. Failure to Reimburse Required Business Expenses**

25 31. DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally,
26 knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the other members
27 of the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and other
28 CALIFORNIA CLASS members in direct consequence of discharging their duties on behalf of



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

7 32. In the course of his employment PLAINTIFF and other CALIFORNIA CLASS members
8 as a business expense, were required by DEFENDANTS to use their own personal cellular phones and
9 personal vehicles as a result of and in furtherance of their job duties as employees for DEFENDANTS
10 but were not reimbursed or indemnified by DEFENDANTS for the cost associated with the use of their
11 personal cellular phones and personal vehicles for DEFENDANTS' benefit. Specifically, PLAINTIFF
12 and other CALIFORNIA CLASS members were required by DEFENDANTS to use their personal cell
13 phones and personal vehicles in the execution of their essential job duties. But for the use of his
14 personal cell phone and personal vehicle, PLAINTIFF and the members of the CALIFORNIA CLASS,
15 could not complete their essential job duties. As a result, in the course of their employment with
16 DEFENDANTS, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
17 unreimbursed business expenses which included, but were not limited to, costs related to the use of
18 their personal cellular phones, gas and associated vehicle expenses, all on behalf of and for the benefit
19 of DEFENDANTS.

20 **F. Wage Statement Violations**

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



1 34. From time to time during the CLASS PERIOD, when PLAINTIFF and other
2 CALIFORNIA CLASS members missed meal and rest breaks, or were paid inaccurate missed meal
3 and rest period premiums, or were paid overtime in the same pay period where they earned a non-
4 discretionary incentive award, DEFENDANTS also failed to provide PLAINTIFF and the other
5 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to
6 show, among other things, all applicable hourly rates in effect during the pay period and the
7 corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or
8 missed meal and rest periods.

9 35. Further, from time to time during the CLASS PERIOD, DEFENDANTS furnished wage
10 statements to PLAINTIFF and other CALIFORNIA CLASS members that incorrectly stated the total
11 hours worked during the applicable pay period by adding non-working hours like sick time and paid
12 time off with hours worked.

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

17 37. To date, DEFENDANT has not fully paid PLAINTIFF the overtime compensation,
18 minimum wages, and the meal and rest break premiums still owed to him or any penalty wages owed
19 to him under Cal. Lab. Code § 203.

20 **CLASS ACTION ALLEGATIONS**

21 38. PLAINTIFF brings the First through Seventh Causes of Action as a class action pursuant
22 to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current and former non-
23 exempt California employees ("CALIFORNIA CLASS") between April 6, 2016 and a date determined
24 by the Court ("CLASS PERIOD").

25 39. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been
26 deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid
27 minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal
28 and rest period policies, failure to separately compensate rest periods, failure to separately compensate

1 for all non-productive time, failure to provide accurate itemized wage statements, failure to maintain
2 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

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

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

12 a. Whether DEFENDANTS maintained legally compliant meal period
13 policies and practices;

14 b. Whether DEFENDANTS maintained legally compliant rest period
15 policies and practices;

16 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
17 CALIFORNIA CLASS members accurate premium payments for missed
18 meal and rest periods;

19 d. Whether DEFENDANTS failed to pay PLAINTIFF and the
20 CALIFORNIA CLASS members accurate overtime wages.

21 e. Whether DEFENDANTS failed to pay PLAINTIFF and the
22 CALIFORNIA CLASS members at least minimum wage for all hours
23 worked.

24 f. Whether DEFENDANTS issued legally compliant wage statements;

25 g. Whether DEFENDANTS committed an act of unfair competition by
26 systematically failing to record and pay PLAINTIFF and the other members
27 of the CALIFORNIA CLASS for all time worked;

28 h. Whether DEFENDANTS committed an act of unfair competition by

1 systematically failing to record all meal and rest breaks missed by
2 PLAINTIFF and other CALIFORNIA CLASS members, even though
3 DEFENDANTS enjoyed the benefit of this work, required employees to
4 perform this work and permits or suffers to permit this work;

5 i. Whether DEFENDANTS committed an act of unfair competition in
6 violation of the UCL, by failing to reimburse PLAINTIFFS and the other
7 members of the CALIFORNIA CLASS for necessary expenses incurred in
8 the discharge of their duties.

9 j. Whether DEFENDANTS committed an act of unfair competition in
10 violation of the UCL, by failing to provide the PLAINTIFF and the other
11 members of the CALIFORNIA CLASS with the legally required meal and
12 rest periods; and,

13 42. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result
14 of DEFENDANTS' conduct and actions alleged herein.

15 43. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same
16 interests as the other members of the class.

17 44. PLAINTIFF will fairly and adequately represent and protect the interests of the
18 CALIFORNIA CLASS members.

19 45. PLAINTIFF retained able class counsel with extensive experience in class action
20 litigation.

21 46. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests
22 of the other CALIFORNIA CLASS members.

23 47. There is a strong community of interest among PLAINTIFF and the members of the
24 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient
25 to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

26 48. The questions of law and fact common to the CALIFORNIA CLASS members
27 predominate over any questions affecting only individual members, including legal and factual issues
28 relating to liability and damages.

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

9 Cal. Bus. & Prof. Code § 17203.

10 54. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
11 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
12 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
13 “UCL”), by engaging and continuing to engage in business practices which violates California law,
14 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
15 and the California Labor Code including Sections 204, 210, 226, 226.7, 510, 512, 1194, 1197, 1197.1,
16 1198 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
17 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
18 unfair competition, including restitution of wages wrongfully withheld.

19 55. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that
20 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or
21 substantially injurious to employees, and were without valid justification or utility for which this Court
22 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
23 Professions Code, including restitution of wages wrongfully withheld.

24 56. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and fraudulent
25 in that DEFENDANTS’ uniform policy and practice failed to, *inter alia*, provide the legally mandated
26 meal and rest periods, the required accurate amount of compensation for missed meal and rest periods,
27 overtime and minimum wages owed, provide accurate itemized wage statements, due to a systematic
28 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial

1 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
2 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
3 restitution of wages wrongfully withheld.

4 57. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
5 deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the other members of
6 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

7 58. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
8 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*,
9 provide the legally mandated meal and rest periods, the required accurate amount of compensation for
10 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage
11 statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
12 Labor Code.

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

17 60. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA
18 CLASS member, one (1) hour of pay for each workday in which an off duty paid rest period was not
19 timely provided as required by law.

20 61. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
21 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
22 calculated overtime and missed meal and rest periods premiums.

23 62. By and through the unlawful and unfair business practices described herein,
24 DEFENDANTS has obtained valuable property, money and services from PLAINTIFF and the other
25 members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has
26 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of
27 these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
28 compete against competitors who comply with the law.

1 April 6, 2016 and the present (“LABOR CLASS PERIOD”) bring a claim for DEFENDANTS’ willful
2 and intentional violations of the California Labor Code and the Industrial Welfare Commission
3 requirements for DEFENDANTS’ failure to pay these employees for all overtime worked, including,
4 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or
5 forty (40) hours in any workweek.

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

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

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

15 72. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
16 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they
17 worked or were not accurately compensated for all overtime hours worked.

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

25 74. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
26 calculated the amount of overtime worked and the applicable overtime rates and consequently underpaid
27 the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS.
28 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits

1 in violation of the California Labor Code, the Industrial Welfare Commission requirements and other
2 applicable laws and regulations.

3 75. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
4 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for
5 all overtime worked.

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

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

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

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

27 80. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
28 the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANTS

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

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

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

22 **THIRD CAUSE OF ACTION**

23 **For Failure to Pay Minimum Wages**

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

25 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

28 84. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for

1 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
2 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
3 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the
4 LABOR CLASS PERIOD.

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

7 86. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
8 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
9 minimum so fixed is unlawful.

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

12 88. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
13 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
14 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
15 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
16 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to
17 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members
18 of the CALIFORNIA CLASS.

19 89. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
20 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
21 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
22 of the CALIFORNIA CLASS in regard to minimum wage pay.

23 90. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
24 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF
25 and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid
26 the payment of all earned wages, and other benefits in violation of the California Labor Code, the
27 Industrial Welfare Commission requirements and other applicable laws and regulations.

28 91. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,

1 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum
2 wage compensation for their time worked for DEFENDANTS.

3 92. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the
4 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure
5 to pay all earned wages.

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

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

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

24 96. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
25 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of
26 any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code
27 and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed
28 to the CALIFORNIA CLASS members who have terminated their employment, DEFENDANTS'

1 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled
2 to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of
3 these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein was willful,
4 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS members are
5 entitled to seek and recover statutory costs.

6 **FOURTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 226.7 & 512]**

9 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

12 98. From time-to-time during the LABOR CLASS PERIOD, as a result of their overburdened
13 work requirements, inadequate staffing and not being relieved of cordless communication devices during
14 their shifts, DEFENDANTS failed to provide all the legally required off-duty meal breaks to
15 PLAINTIFF and the other CALIFORNIA CLASS members as required by the applicable Wage Order
16 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS
17 members did not prevent these employees from being relieved of all of their duties for the legally
18 required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
19 CALIFORNIA CLASS members were from time to time not fully relieved of duty by DEFENDANTS
20 for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFF and the
21 CALIFORNIA CLASS members with legally required meal breaks prior to their fifth (5th) hour of work
22 is evidenced by DEFENDANTS' business records from time to time. Further, DEFENDANTS failed to
23 provide PLAINTIFF and CALIFORNIA CLASS members with a second off-duty meal period in some
24 workdays in which these employees were required by DEFENDANTS to work ten (10) hours of work.
25 As a result, PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal
26 breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy
27 and practice.

28 99. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable IWC

1 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not
2 provided a meal period, in accordance with the applicable Wage Order, one additional hour of
3 compensation at each employee's regular rate of compensation for each workday that a meal period was
4 not provided.

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

8 **FIFTH CAUSE OF ACTION**

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

10 **[Cal. Lab. Code §§ 226.7 & 512]**

11 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

14 102. From time-time during the LABOR CLASS PERIOD, as a result of their overburdened
15 work requirements, inadequate staffing and not being relived of cordless communication devices during
16 their shifts, PLAINTIFF and other CALIFORNIA CLASS members were from time to time required to
17 work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these
18 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
19 least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts
20 worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
21 (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
22 CALIFORNIA CLASS members were also not provided with one-hour wages in lieu thereof. As a
23 result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were
24 periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

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



1 not provided.

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

5 **SIXTH CAUSE OF ACTION**

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

7 **[Cal. Lab. Code § 2802]**

8 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

11 106. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

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

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

10 **SEVENTH CAUSE OF ACTION**

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

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

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

14 109. 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.

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

- 18 1. Gross wages earned;
- 19 2. Total hours worked by the employee, except for any employee
20 whose compensation is solely based on a salary and who is exempt from
21 payment of overtime under subdivision (a) of Section 515 or any applicable
22 order of the Industrial Welfare Commission;
- 23 3. The number of piece-rate units earned and any applicable piece rate
24 if the employee is paid on a piece-rate basis;
- 25 4. All deductions, provided that all deductions made on written orders
26 of the employee may be aggregated and shown as one item;
- 27 5. Net wages earned;
- 28 6. The inclusive dates of the period for which the employee is paid,



1 7. The name of the employee and his or her social security number,
2 except that by January 1, 2008, only the last four digits of his or her social
3 security number or an employee identification number other than a social
4 security number may be shown on the itemized statement,

5 8. The name and address of the legal entity that is the employer, and

6 9. All applicable hourly rates in effect during the pay period and the
7 corresponding number of hours worked at each hourly rate by the employee.

8 111. From time-to-time during the LABOR CLASS PERIOD, DEFENDANTS also failed to
9 provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
10 wage statements which failed to accurately show, among other things, (1) total number of hours
11 worked, (2) net wages earned, (3) gross wages earned and (7) all applicable hourly rates in effect during
12 the pay period and the corresponding number of hours worked at each hourly rate by the employee in
13 violation of California Labor Code Section 226.

14 112. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §
15 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA
16 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for
17 the overtime worked and the amount of employment taxes which were not properly paid to state and
18 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other
19 members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)
20 for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
21 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and
22 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time
23 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
24 member of the CALIFORNIA CLASS herein.

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

3 **(Cal. Lab. Code §§201, 202, 203)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS Against All DEFENDANTS)**

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

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

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

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

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

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

22 117. There is no definite term in PLAINTIFF's or any CALIFORNIA CLASS members'
23 employment contract.

24 118. Cal. Lab. Code § 203 provides:

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

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2 119. During the LABOR CLASS PERIOD, the employment of many CALIFORNIA CLASS
3 members terminated, and DEFENDANTS have not tendered payment of wages, to these employees
4 who missed meal and rest breaks and/or were underpaid overtime, or worked off the clock during what
5 was supposed to be off duty meal periods, as required by law.

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

11 **NINTH CAUSE OF ACTION**

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

13 **[Cal. Lab. Code §§ 2698 et seq.]**

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

15 121. PLAINTIFF realleges and incorporate by this reference, as though fully set forth herein,
16 the prior paragraphs of this Complaint.

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

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

28 124. PLAINTIFF brings this Representative Action on behalf of the State of California with
respect to himself and all of DEFENDANTS' current and former non-exempt employees employed in

1 California (“AGGRIEVED EMPLOYEES”) between November 6, 2019 and a future date set by this
2 Court (“PAGA PERIOD”).

3 125. To the extent equitable tolling operates to toll the claims asserted by the PLAINTIFF
4 against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

5 126. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to the
6 California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled the statute
7 of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of
8 limitation and repose for civil causes of action that are 180 days or less, or (b) October 1, 2020 for
9 statutes of limitation and repose for civil causes of action that exceed 180 days.

10 127. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
11 similarly situated employees were aggrieved employees of DEFENDANTS within the meaning of
12 Labor Code Section 2699(c).

13 128. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
14 PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil action to
15 recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

16 129. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
17 Section 2699.3. By certified letter, return receipt requested, dated November 6, 2020, PLAINTIFF
18 gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to
19 DEENDANTS of the specific provisions of the Labor Code alleged to have been violated, including
20 the facts and theories to support the alleged violations.

21 130. As of the date of this filing, the LWDA has not provided any notice by certified mail of
22 its intent to investigate the DEFENDANTS’ alleged violations as mandated by Labor Code Section
23 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may
24 commence and is authorized to pursue this cause of action.

25 131. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and similarly
26 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of Labor
27 Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d),
28 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 in the following amounts:

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

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

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

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

20 e. For violations of Labor Code Section 2269(a), a civil penalty in the
21 amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE
22 per violation in an initial citation and one thousand dollars (\$1,000) per
23 AGGRIEVED EMPLOYEE for each subsequent violation [penalty per
24 Labor Code Section 226.3];

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

28 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and
1199, a civil penalty in the amount of one hundred dollars (\$100) per

1 AGGRIEVED EMPLOYEE per pay period for the initial violation and two
2 hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period
3 for each subsequent violation [penalty per Labor Code Section].

4 132. For all provisions of the Labor Code for which civil penalty is not specifically provided,
5 Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each
6 AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for
7 each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the
8 AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in
9 connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and
12 severally, as follows:

13 1. On behalf of the CALIFORNIA CLASS:

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

16 B) An order temporarily, preliminarily and permanently enjoining and restraining
17 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

18 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
19 from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

20 D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for
21 restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other
22 members of the CALIFORNIA CLASS.

23 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes of
24 Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. §
25 382;

26 1. Compensatory damages, according to proof at trial, including compensatory
27 damages for unpaid minimum wages and overtime compensation due PLAINTIFF and the other
28

1 members of the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus
2 interest thereon at the statutory rate;

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

7 3. Meal and rest period compensation pursuant to California Labor Code Section
8 226.7, 512 and the applicable IWC Wage Order;

9 4. Waiting time penalties pursuant to Labor Code Section 201, 202 and 203;

10 5. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
11 1197; and;

12 2. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

13 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act
14 of 2004; and

15 b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

16 3. On all claims:


17 A) An award of interest, including prejudgment interest at the legal rate;

18 B) Such other and further relief as the Court deems just and equitable; and,

19 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
20 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

21 Dated: January 11, 2021

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

24 By: 
25 Jean-Claude Lapuyade
26 Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

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

Dated: January 11, 2021

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

By: 

Jean-Claude Lapuyade
Attorneys for PLAINTIFF



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