

**SUMMONS
(CITACION JUDICIAL)**

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

KAR AUCTION SERVICES, INC., a Delaware Corporation; ADESA, INC. a Delaware Corporation; STRATIM ESSENTIALS, INC. a Delaware Corporation; STRATIM ESSENTIALS TRANSPORTATION, INC., a Delaware Corporation, and DOES 1-50, Inclusive,

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

JOSEFINA GARCES, an individual, on behalf of herself and on behalf of all persons similarly situated

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

**CONFORMED COPY
ORIGINAL FILED**

Superior Court of California
County of Los Angeles

AUG 15 2019

Sherri R. Carter, Executive Officer/Clerk of Court
By Steven Drew, Deputy

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

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

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

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

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

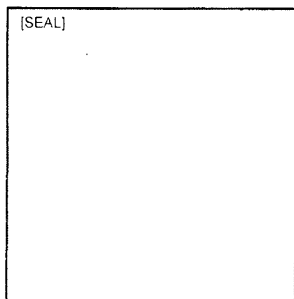
The name and address of the court is: 312 Spring St, Los Angeles, CA 90012
(El nombre y dirección de la corte es): Los Angeles Superior Court

CASE NUMBER:
(Número del Caso) **19STCV28489**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq., 3990 Old Town Avenue, Ste C204 San Diego, California 92110 Telephone: (619) 255-9047

DATE: **AUG 15 2019** Clerk, by Sherri R. Carter, Clerk (Secretario) STEVEN DREW, 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):

1 **ZAKAY LAW GROUP, APLC**
2 Shani O. Zakay (State Bar #277924)
3 3990 Old Town Ave., Ste. C204
4 San Diego, CA 92110
5 Telephone: (619)255-9047
6 Facsimile: (858) 404-9203
7 Website: www.zakaylaw.com

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

AUG 15 2019

Sherrri K. Carter, Executive Officer/Clerk of Court
By [Signature], Deputy
Clerk of Court

5 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

6 Norman B. Blumenthal (State Bar #068687)
7 2255 Calle Clara
8 La Jolla, CA 92037
9 Telephone: (858)551-1223
10 Facsimile: (858) 551-1232
11 Website: www.bamlawca.com

12 Attorneys for Plaintiff

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF COUNTY OF LOS ANGELES**

12 JOSEFINA GARCES, an individual, on behalf
13 of herself and on behalf of all persons similarly
14 situated,

15 Plaintiff,

16 v.

17 KAR AUCTION SERVICES, INC., a
18 Delaware Corporation; ADESA, INC. a
19 Delaware Corporation; STRATIM
20 ESSENTIALS, INC. a Delaware Corporation;
21 STRATIM ESSENTIALS
22 TRANSPORTATION, INC., a Delaware
23 Corporation, and DOES 1-50, Inclusive,

24 Defendants.

Case No: **19STCV28489**

REPRESENTATIVE ACTION
COMPLAINT FOR:

1) VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT
PURSUANT TO LABOR CODE
SECTIONS 2698, et seq.

By Fax

24 Plaintiff, JOSEFINA GARCES (hereinafter "PLAINTIFF" or "PLAINTIFFS"), on behalf of the
25 people of the State of California and as "aggrieved employees" acting as a private attorney general
26 under the Labor Code Private Attorney General Action of 2004, § 2699, et seq. ("PAGA") only,
27 alleges on information and belief, except for her own acts and knowledge which are based on
28 personal knowledge, the following:

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INTRODUCTION

1. PLAINTIFF brings this action against KAR AUCTION SERVICES, INC.; ADESA, INC.; STRATIM ESSENTIALS, INC.; and STRATIM ESSENTIALS TRANSPORTATION, INC. (“DEFENDANT” or “DEFENDANTS”) seeking only to recover PAGA civil penalties for herself, and on behalf of all current and former aggrieved employees that worked for DEFENDANTS. PLAINTIFF does **not seek to recover anything other than penalties as permitted by California Labor Code § 2699.** To the extent that statutory violations are mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special damages for those violations, but simply the civil penalties permitted by California Labor Code § 2699.

2. California has enacted the PAGA to permit an individual to bring an action on behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole nature of this action.

3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANTS’ violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be construed as attempting to obtain any relief that would not be available in a PAGA-only action.

THE PARTIES

1. Defendant KAR AUCTION SERVICES, INC. (“Kar Auction”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California. Defendant ADESA, INC. (“Adesa”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California. Defendant STRATIM ESSENTIALS, INC. (“Stratim Essentials”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California. Defendant STRATIM ESSENTIALS TRANSPORTATION, INC. (“Stratim Transportation”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California. Kar Auction,

1 Adesa, Stratim Essentials, and Stratim Transportation are hereinafter referred to collectively as
2 “DEFENDANTS” or “DEFENDANTS.”

3 2. Kar Auction, Adesa, Stratim Essentials and Stratim Transportation were the joint
4 employers of PLAINTIFF as evidenced by the contracts signed and by the company the
5 PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers
6 for the conduct alleged herein and collectively referred to herein as “DEFENDANTS”.

7 3. Stratim Essentials and Stratim Transportation provide vehicle transportation
8 service that uses technology to help moving vehicles for various purposes. Kar Auction provides
9 technology-driven end-to-end platform support for the remarketing of cars, salvage, financing,
10 logistics and other ancillary and related services. Adesa provides wholesale vehicle auction
11 solutions to professional buyers and sellers. Adesa is a subsidiary of Kar Auction. Kar Auction
12 also acquired Stratim Essentials in February 2018.

13 4. PLAINTIFF was employed by DEFENDANTS in California from June 2018 to
14 November 2018 as a non-exempt employee, paid on an hourly basis, and entitled to the legally
15 required meal and rest periods and payment of minimum and overtime wages due for all time
16 worked.

17 5. PLAINTIFFS, and such persons that may be added from time to time who satisfy
18 the requirements and exhaust the administrative procedures under the Private Attorney General
19 Act, bring this Representative Action on behalf of the State of California with respect to
20 themselves and all individuals who are or previously were employed by Kar Auction, and/or
21 Adesa, and/or Stratim Essentials, and/or Stratim Transportation and classified as non-exempt
22 employees in California, (the "AGGRIEVED EMPLOYEES") during the time period of June 5,
23 2018 until a date as determined by the Court (the “PAGA PERIOD”).

24 6. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
25 or formerly employed by Kar Auction, and/or Adesa, and/or Stratim Essentials, and/or Stratim
26 Transportation during the PAGA PERIOD, bring this representative action pursuant to Labor
27 Code § 2699, *et seq.* seeking penalties for DEFENDANTS’ violation of California Labor Code
28 §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 1198.5, 2802 and the
applicable Wage Order. Based upon the foregoing, PLAINTIFF and all AGGRIEVED
EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

1 clocking out when PLAINTIFF's shift should have ended. As a result, the PLAINTIFF and other
2 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by regularly
3 working without their time being accurately recorded and without compensation at the applicable
4 minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay
5 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by
6 DEFENDANTS' business records.

7 11. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
8 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and are
9 not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
10 EMPLOYEES are required to perform work as ordered by DEFENDANTS for more than five (5)
11 hours during some shifts without receiving a meal break. Further, DEFENDANTS fails to provide
12 PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period for some
13 workdays in which these employees are required by DEFENDANTS to work ten (10) hours of
14 work. As a result, DEFENDANTS' failure to provide PLAINTIFF and the AGGRIEVED
15 EMPLOYEES with legally required meal breaks is evidenced by DEFENDANTS' business
16 records. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal
17 breaks without additional compensation and in accordance with DEFENDANTS' strict corporate
18 policy and practice.

19 12. From time to time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
20 EMPLOYEES were also required to work in excess of four (4) hours without being provided ten
21 (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten
22 (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first
23 and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
24 eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes
25 for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
26 AGGRIEVED EMPLOYEES were also not provided with one hour wages in lieu thereof. As a
27 result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES were
28 from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS'
managers. Additionally, the applicable California Wage Order requires employers to provide
employees with off-duty rest periods, which the California Supreme Court defined as time during

1 which an employee is relieved from all work related duties and free from employer control. In so
2 doing, the Court held that the requirement under California law that employers authorize and permit
3 all employees to take rest period means that employers must relieve employees of all duties and
4 relinquish control over how employees spend their time which includes control over the locations
5 where employees may take their rest period. Employers cannot impose controls that prohibit an
6 employee from taking a brief walk - five minutes out, five minutes back. Here, DEFENDANTS'
7 uniform policy restricted PLAINTIFF and other CALIFORNIA CLASS Members from
8 unconstrained walks and was unlawful based on Defendant's rule which stated PLAINTIFF and
9 other AGGRIEVED EMPLOYEES could not leave the work premises during their rest period.

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

20 14. In the course of their employment, PLAINTIFF and other AGGRIEVED
21 EMPLOYEES as a business expense, were required by DEFENDANTS to use their own personal
22 cellular phones as a result of and in furtherance of their job duties as employees for DEFENDANTS
23 but were not reimbursed or indemnified by DEFENDANTS for the cost associated with the use of
24 their personal cellular phones for DEFENDANTS' benefit. Specifically, PLAINTIFF and other
25 AGGRIEVED EMPLOYEES were required by DEFENDANTS to use their personal cell phones
26 to conduct work related business. As a result, in the course of their employment with
27 DEFENDANTS the PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed
28 business expenses which included, but were not limited to, costs related to the use of their personal
cellular phones all on behalf of and for the benefit of DEFENDANTS.

1 15. When PLAINTIFF and other AGGRIEVED EMPLOYEES were required to miss
2 meal and rest breaks, DEFENDANTS also failed to provide PLAINTIFF and the other
3 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
4 among other things, the correct wages paid for missed meal and rest breaks. Cal. Lab. Code § 226
5 provides that every employer shall furnish each of his or her employees with an accurate itemized
6 wage statement in writing showing, among other things, gross wages earned and all applicable
7 hourly rates in effect during the pay period and the corresponding amount of time worked at each
8 hourly rate. Additionally, the wage statements DEFENDANTS issued to PLAINTIFF and other
9 AGGRIEVED EMPLOYEES violated Cal. Lab. Code Section 226(a) in that DEFENDANTS failed
10 to correctly list the correct name of the legal entity that was the employer of PLAINTIFF and the
11 AGGRIEVED EMPLOYEES. Aside, from the violations listed above in this paragraph,
12 DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all the
13 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANTS from time to
14 time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
15 statements which violated Cal. Lab. Code § 226.

16 16. In violation of the applicable sections of the California Labor Code and the
17 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
18 matter of company policy, practice and procedure, intentionally, knowingly and systematically
19 failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and
20 rest periods. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid
21 the payment for all time worked as required by California law which allows DEFENDANTS to
22 illegally profit and gain an unfair advantage over competitors who complied with the law. To the
23 extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
24 DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

25 17. Specifically as to PLAINTIFF, DEFENDANTS failed to provide all the legally
26 required off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor
27 Code and failed to pay her all minimum and overtime wages due to her. DEFENDANTS also failed
28 to reimburse PLAINTIFF for her personal cell phone use. DEFENDANTS did not have a policy
or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and also failed to
compensate PLAINTIFF for his missed meal and rest breaks. The nature of the work performed by

1 the PLAINTIFF did not prevent her from being relieved of all of his duties for the legally required
2 off-duty meal periods. As a result, DEFENDANTS' failure to provide PLAINTIFF with the legally
3 required meal periods is evidenced by DEFENDANTS' business records. As a result of
4 DEFENDANTS not accurately recording all missed meal and rest periods and/or minimum and
5 overtime wages due, the wage statements issued to PLAINTIFF by DEFENDANTS violated
6 California law, and in particular, Labor Code Section 226(a). To date, DEFENDANTS have yet to
7 pay PLAINTIFF all wages due to her and DEFENDANTS have failed to pay any penalty wages
8 owed to her under California Labor Code Section 203. The amount in controversy for PLAINTIFF
9 individually does not exceed the sum or value of \$75,000.

10 **JURISDICTION AND VENUE**

11 18. This Court has jurisdiction over this Action pursuant to California Code of Civil
12 Procedure, Section 410.10.

13 19. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant times
15 maintained offices and facilities in this County and/or conduct substantial business in this County,
16 and (ii) committed the wrongful conduct herein alleged in this County against PLAINTIFFS and
17 the AGGRIEVED EMPLOYEES.

18 **FIRST CAUSE OF ACTION**

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

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

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

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

24 21. PAGA is a mechanism by which the State of California itself can enforce state
25 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
26 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
27 fundamentally a law enforcement action designed to protect the public and not to benefit private
28 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means

1 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
2 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
3 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
4 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

5 22. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to
8 themselves and all individuals who are or previously were employed by DEFENDANT and
9 classified as non-exempt employees in California during the time period of June 5, 2018 until the
10 present (the "AGGRIEVED EMPLOYEES").

11 23. On June 5, 2019, PLAINTIFF gave written notice by certified mail to the Labor
12 and Workforce Development Agency (the "Agency") and the employer of the specific
13 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
14 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
15 period for PLAINTIFF to make these allegations in the Complaint has expired. As a result,
16 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
17 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
18 AGGRIEVED EMPLOYEES as herein defined.

19 24. The policies, acts and practices heretofore described were and are an unlawful
20 business act or practice because Defendant (a) failed to provide PLAINTIFF and other
21 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (b) failed to provide accurate
22 itemized wage statements, and (c) failed to timely pay wages, all in violation of the applicable
23 Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§
24 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 1198.5, 2802 and the
25 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of
26 such conduct. PLAINTIFFS hereby seek recovery of civil penalties as prescribed by the Labor
27 Code Private Attorney General Act of 2004 as the representative of the State of California for the
28 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for a judgment against each Defendants, jointly and severally, as follows:

- 1. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
 - a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and
 - b. An award of penalties, attorneys’ fees and costs of suit, as allowable under the law.

DATED: August 14, 2019

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for Plaintiff

DEMAND FOR A JURY TRIAL

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

DATED: August 14, 2019

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for Plaintiff

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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #21201

June 5, 2019

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

<p>KAR AUCTION SERVICES, INC. c/o CORPORATION SERVICE COMPANY 251 LITTLE FALLS DRIVE WILMINGTON, DE 19808</p>	<p>STRATIM ESSENTIALS, INC. 13085 HAMILTON CROSSING BLVD. CARMEL, IN 46032 cc: Ryan H. Crosner, Esq. Ogletree, Deakins, Nash, Smoak & Stewart, P.C. 400 South Hope Street, Ste. 1200 Los Angeles, CA 90071</p>
<p>ADESA, INC. c/o CORPORATION SERVICE COMPANY 2710 GATEWAY OAKS DRIVE, STE 150N SACRAMENTO, CA 95833</p>	<p>STRATIM ESSENTIALS TRANSPORTATION, INC. c/o KRISTEN TROUT 13085 HAMILTON CROSSING BLVD. CARMEL, IN 46032</p>

Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1198.5, 2802, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff Josefina Garces (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Kar Auction Services, Inc., a Delaware Corporation, Adesa, Inc. a Delaware Corporation, Stratim Essentials, Inc. a California Corporation, and Stratim Essentials Transportation, Inc., a California Corporation (“Defendants”). Plaintiff was employed by Defendants in California from June 2018 to November 2018 as a nonexempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendants’ control, including minimum wage and overtime. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their missed meal and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep accurate time records showing when Plaintiff began and ended each shift. Plaintiff also

contends that Defendants failed to reimburse her and other Aggrieved Employees with necessary work-related expenses, including personal cell phones. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1198.5, 2802, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a long horizontal flourish extending to the right.

Shani O. Zakay
Attorney for Josefina Garces

1 **ZAKAY LAW GROUP, APLC**
Shani O. Zakay (State Bar #277924)
2 3990 Old Town Ave., Ste. C204
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF COUNTY OF LOS ANGELES**

12 JOSEFINA GARCES, an individual, on behalf
13 of herself and on behalf of all persons similarly
14 situated,

15 Plaintiff,

16 v.

17 KAR AUCTION SERVICES, INC., a
Delaware Corporation; ADESA, INC. a
18 Delaware Corporation; STRATIM
ESSENTIALS, INC. a California Corporation;
19 STRATIM ESSENTIALS
TRANSPORTATION, INC., a California
20 Corporation, and DOES 1-50, Inclusive,

21 Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant KAR AUCTION SERVICES, INC. (“Kar Auction”) is a Delaware
7 corporation that at all relevant times mentioned herein conducted and continues to conduct
8 substantial and regular business throughout California. Defendant ADESA, INC. (“Adesa”) is a
9 Delaware corporation that at all relevant times mentioned herein conducted and continues to
10 conduct substantial and regular business throughout California. Defendant STRATIM
11 ESSENTIALS, INC. (“Stratim Essentials”) is a California corporation that at all relevant times
12 mentioned herein conducted and continues to conduct substantial and regular business
13 throughout California. Defendant STRATIM ESSENTIALS TRANSPORTATION, INC.
14 (“Stratim Transportation”) is a California corporation that at all relevant times mentioned herein
15 conducted and continues to conduct substantial and regular business throughout California. Kar
16 Auction, Adesa, Stratim Essentials, and Stratim Transportation are hereinafter referred to
collectively as “DEFENDANTS.”

17 2. Kar Auction, Adesa, Stratim Essentials and Stratim Transportation were the joint
18 employers of PLAINTIFF as evidenced by the contracts signed and by the company the
19 PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers
20 for the conduct alleged herein and collectively referred to herein as “DEFENDANTS”.

21 3. Stratim Essentials and Stratim Transportation provide vehicle transportation
22 service that uses technology to help moving vehicles for various purposes. Kar Auction
23 provides technology-driven end-to-end platform support for the remarketing of cars, salvage,
24 financing, logistics and other ancillary and related services. Adesa provides wholesale vehicle
25 auction solutions to professional buyers and sellers. Adesa is a subsidiary of Kar Auction. Kar
26 Auction also acquired Stratim Essentials in February 2018.

27 4. PLAINTIFF was employed by DEFENDANTS in California from June 2018 to
28 November 2018 as a non-exempt employee, paid on an hourly basis, and entitled to the legally

1 required meal and rest periods and payment of minimum and overtime wages due for all time
2 worked.

3 5. PLAINTIFF brings this Class Action on behalf of herself and a California class,
4 defined as all persons who are or previously were employed by Kar Auction, and/or Adesa,
5 and/or Stratim Essentials, and/or Stratim Transportation, in California and classified as non-
6 exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four
7 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
8 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of
9 the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

9 **THE CONDUCT**

10 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
11 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
12 worked, meaning the time during which an employee is subject to the control of an employer,
13 including all the time the employee is suffered or permitted to work. DEFENDANTS required
14 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
15 they were under DEFENDANTS' control. Specifically, DEFENDANTS required PLAINTIFF
16 to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break,
17 as well as after clocking out when PLAINTIFF's shift should have ended. As a result, the
18 PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime
19 compensation by regularly working without their time being accurately recorded and without
20 compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform
21 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
22 time worked is evidenced by DEFENDANTS' business records.

23 10. As a result of their rigorous work schedules, PLAINTIFF and other
24 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off
25 duty meal breaks and are not fully relieved of duty for their meal periods. PLAINTIFF and other
26 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
27 more than five (5) hours during some shifts without receiving a meal break. Further,
28 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second

1 off-duty meal period for some workdays in which these employees are required by
2 DEFENDANT to work ten (10) hours of work. As a result, DEFENDANTS' failure to provide
3 PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is
4 evidenced by DEFENDANTS' business records. PLAINTIFF and other members of the
5 CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in
6 accordance with DEFENDANTS' strict corporate policy and practice.

7 11. From time to time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
8 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
9 without being provided ten (10) minute rest periods. Further, these employees were denied their
10 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
11 hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts
12 worked of between six (6) and eight (8) hours from time to time, and a first, second and third
13 rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
14 time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided
15 with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF
16 and other CALIFORNIA CLASS Members were from time to time denied their proper rest
17 periods by DEFENDANTS and DEFENDANTS' managers. Additionally, the applicable
18 California Wage Order requires employers to provide employees with off-duty rest periods,
19 which the California Supreme Court defined as time during which an employee is relieved from
20 all work related duties and free from employer control. In so doing, the Court held that the
21 requirement under California law that employers authorize and permit all employees to take rest
22 period means that employers must relieve employees of all duties and relinquish control over
23 how employees spend their time which includes control over the locations where employees
24 may take their rest period. Employers cannot impose controls that prohibit an employee from
25 taking a brief walk - five minutes out, five minutes back. Here, DEFENDANTS' uniform
26 policy restricted PLAINTIFF and other CALIFORNIA CLASS Members from unconstrained
27 walks and was unlawful based on Defendant's rule which stated PLAINTIFF and other
28 CALIFORNIA CLASS Members could not leave the work premises during their rest period.

1 12. DEFENDANTS as a matter of corporate policy, practice and procedure,
2 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF
3 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
4 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
5 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802,
6 employers are required to indemnify employees for all expenses incurred in the course and
7 scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
8 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
9 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
10 directions of the employer, even though unlawful, unless the employee, at the time of obeying
11 the directions, believed them to be unlawful."

12 13. In the course of their employment, PLAINTIFF and other CALIFORNIA
13 CLASS Members as a business expense, were required by DEFENDANTS to use their own
14 personal cellular phones as a result of and in furtherance of their job duties as employees for
15 DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost
16 associated with the use of their personal cellular phones for DEFENDANTS' benefit.
17 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
18 DEFENDANTS to use their personal cell phones to conduct work related business. As a result,
19 in the course of their employment with DEFENDANTS the PLAINTIFF and other members of
20 the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were
21 not limited to, costs related to the use of their personal cellular phones all on behalf of and for
22 the benefit of DEFENDANTS.

23 14. When PLAINTIFF and other CALIFORNIA CLASS Members were required to
24 miss meal and rest breaks, DEFENDANTS also failed to provide PLAINTIFF and the other
25 members of the CALIFORNIA CLASS with complete and accurate wage statements which
26 failed to show, among other things, the correct wages paid for missed meal and rest breaks. Cal.
27 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with
28 an accurate itemized wage statement in writing showing, among other things, gross wages

1 earned and all applicable hourly rates in effect during the pay period and the corresponding
2 amount of time worked at each hourly rate. Additionally, the wage statements DEFENDANTS
3 issued to PLAINTIFF and other CALIFORNIA CLASS Members violated Cal. Lab. Code
4 Section 226(a) in that DEFENDANTS failed to correctly list the correct name of the legal entity
5 that was the employer of PLAINTIFF and the CALIFORNIA CLASS Members. Aside, from
6 the violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an
7 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
8 As a result, DEFENDANTS from time to time provided PLAINTIFF and the other members of
9 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

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

20 16. By reason of this uniform conduct applicable to PLAINTIFF and the other
21 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
22 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
23 (the "UCL"), by engaging in a uniform company-wide policy, practice and procedure which
24 failed to accurately calculate and record all missed meal and rest periods by PLAINTIFF and
25 other CALIFORNIA CLASS Members. The proper recording of these employees' missed meal
26 and rest breaks is the DEFENDANTS' burden. As a result of DEFENDANTS' intentional
27 disregard of the obligation to meet this burden, DEFENDANT failed to properly calculate
28 and/or pay all required compensation for work performed by the members of the CALIFORNIA

1 CLASS and violated the California Labor Code and regulations promulgated thereunder as
2 herein alleged.

3 17. Specifically as to PLAINTIFF, DEFENDANTS failed to provide all the legally
4 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
5 Labor Code and failed to pay him all minimum and overtime wages due to her. DEFENDANTS
6 also failed to reimburse PLAINTIFF for her personal cell phone use. DEFENDANTS did not
7 have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF
8 and also failed to compensate PLAINTIFF for his missed meal and rest breaks. The nature of
9 the work performed by the PLAINTIFF did not prevent her from being relieved of all of his
10 duties for the legally required off-duty meal periods. As a result, DEFENDANTS' failure to
11 provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANTS'
12 business records. As a result of DEFENDANTS not accurately recording all missed meal and
13 rest periods and/or minimum and overtime wages due, the wage statements issued to
14 PLAINTIFF by DEFENDANTS violated California law, and in particular, Labor Code Section
15 226(a). To date, DEFENDANTS have yet to pay PLAINTIFF all wages due to her and
16 DEFENDANTS have failed to pay any penalty wages owed to her under California Labor Code
17 Section 203. The amount in controversy for PLAINTIFF individually does not exceed the sum
18 or value of \$75,000.

19 **JURISDICTION AND VENUE**

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

24 19. Venue is proper in this Court pursuant to California Code of Civil Procedure,
25 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
26 DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities
27 in this County and/or conducts substantial business in this County, and (ii) committed the
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1 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS
2 and CALIFORNIA LABOR SUB-CLASS.

3
4 **THE CALIFORNIA CLASS**

5 20. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
6 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
7 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
8 individuals who are or previously were employed by Kar Auction, and/or Adesa, and/or Stratim
9 Essentials, and/or Stratim Transportation, in California as non-exempt employees (the
10 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the
11 filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA
12 CLASS PERIOD") The amount in controversy for the aggregate claim of the CALIFORNIA
13 CLASS Members is under five million dollars (\$5,000,000.00).

14 21. To the extent equitable tolling operates to toll claims by the CALIFORNIA
15 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
16 accordingly.

17 22. DEFENDANTS, as a matter of company policy, practice and procedure, and in
18 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
19 requirements, and the applicable provisions of California law, intentionally, knowingly, and
20 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all
21 meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even
22 though DEFENDANTS enjoyed the benefit of this work, required employees to perform this
23 work and permits or suffers to permit this work.

24 23. DEFENDANTS have the legal burden to establish that each and every
25 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
26 required by California laws. The DEFENDANTS, however, as a matter of uniform and
27 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
28 PERIOD and still fails to have in place a policy or practice to ensure that each and every

1 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
2 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
3 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
4 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

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

7 25. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS
8 under California law by:

- 9 a. Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code
10 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
11 in place company policies, practices and procedures that uniformly and
12 systematically failed to record and pay PLAINTIFF and the other members of the
13 CALIFORNIA CLASS for all time worked, including minimum wages owed and
14 overtime wages owed for work performed by these employees;
- 15 b. Committing an act of unfair competition in violation of the UCL, by failing to
16 provide mandatory meal and/or rest breaks to PLAINTIFF and the
17 CALIFORNIA CLASS members;
- 18 c. Committing an act of unfair competition in violation of the California Unfair
19 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.
20 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA
21 CLASS members with necessary expenses incurred in the discharge of their job
22 duties.

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

- 25 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
26 joinder of all such persons is impracticable and the disposition of their claims as
27 a class will benefit the parties and the Court;

- 1 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
- 2 raised in this Complaint are common to the CALIFORNIA CLASS will apply
- 3 uniformly to every member of the CALIFORNIA CLASS;
- 4 c. The claims of the representative PLAINTIFF are typical of the claims of each
- 5 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
- 6 of the CALIFORNIA CLASS, was a non-exempt employee paid on an hourly
- 7 basis who was subjected to the DEFENDANTS’ deceptive practice and policy
- 8 which failed to provide the legally required meal and rest periods to the
- 9 CALIFORNIA CLASS and thereby systematically underpaid compensation to
- 10 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
- 11 as a result of DEFENDANTS’ employment practices. PLAINTIFF and the
- 12 members of the CALIFORNIA CLASS were and are similarly or identically
- 13 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
- 14 misconduct engaged in by DEFENDANTS; and
- 15 d. The representative PLAINTIFF will fairly and adequately represent and protect
- 16 the interest of the CALIFORNIA CLASS, and have retained counsel who are
- 17 competent and experienced in Class Action litigation. There are no material
- 18 conflicts between the claims of the representative PLAINTIFF and the members
- 19 of the CALIFORNIA CLASS that would make class certification inappropriate.
- 20 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
- 21 CALIFORNIA CLASS Members.

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

- 24 a. Without class certification and determination of declaratory, injunctive, statutory
- 25 and other legal questions within the class format, prosecution of separate actions
- 26 by individual members of the CALIFORNIA CLASS will create the risk of:
- 27 i. Inconsistent or varying adjudications with respect to individual members
- 28 of the CALIFORNIA CLASS which would establish incompatible

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standards of conduct for the parties opposing the CALIFORNIA CLASS;
and/or;

ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

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

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

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

i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the

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individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or;

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

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

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

28. The Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

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- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANTS’s employment practices were uniform and systematically applied with respect to the CALIFORNIA CLASS.
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS’ actions have inflicted upon the CALIFORNIA CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- g. DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- h. The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANTS; and

1 i. Class treatment provides manageable judicial treatment calculated to bring an
2 efficient and rapid conclusion to all litigation of all wage and hour related claims
3 arising out of the conduct of DEFENDANTS as to the members of the
4 CALIFORNIA CLASS.

5 29. DEFENDANTS maintain records from which the Court can ascertain and
6 identify by job title each of DEFENDANTS' employees who as have been systematically,
7 intentionally and uniformly subjected to DEFENDANTS' company policy, practices and
8 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
9 any additional job titles of similarly situated employees when they have been identified.

10 **THE CALIFORNIA LABOR SUB-CLASS**

11 30. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, and
12 Eighth Causes of Action on behalf of a California sub-class, defined as all members of the
13 CALIFORNIA CLASS who were employed by Kar Auction, and/or Adesa, and/or Stratim
14 Essentials, and/or Stratim Transportation, in California (the "CALIFORNIA LABOR SUB-
15 CLASS") at any time during the period three (3) years prior to the filing of the complaint and
16 ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS
17 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
18 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
19 (\$5,000,000.00).

20 31. DEFENDANTS, as a matter of company policy, practice and procedure, and in
21 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
22 requirements, and the applicable provisions of California law, intentionally, knowingly,
23 willfully, and systematically, engaged in a practice whereby DEFENDANTS failed to correctly
24 calculate compensation for the time worked by PLAINTIFF and the other members of the
25 CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even
26 though DEFENDANTS enjoyed the benefit of this work, required employees to perform this
27 work and permitted or suffered to permit this work. DEFENDANTS have uniformly denied
28 these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are

1 entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable
2 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
3 DEFENDANTS, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
4 accordingly.

5 32. DEFENDANTS maintain records from which the Court can ascertain and
6 identify by name and job title, each of DEFENDANTS' employees who have been
7 systematically, intentionally and uniformly subjected to DEFENDANTS' company policy,
8 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint
9 to include these additional job titles when they have been identified.

10 33. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
11 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 14 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
15 compensation due to members of the CALIFORNIA LABOR SUB-CLASS and
16 pay for missed meal and rest breaks in violation of the California Labor Code
17 and California regulations and the applicable California Wage Order;
- 18 b. Whether DEFENDANTS failed to provide the PLAINTIFF and the other
19 members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized
20 wage statements
- 21 c. Whether DEFENDANTS have engaged in unfair competition by the above-listed
22 conduct;
- 23 d. The proper measure of damages and penalties owed to the members of the
24 CALIFORNIA LABOR SUB-CLASS; and
- 25 e. Whether DEFENDANTS' conduct was willful.

26 35. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS
27 under California law by:
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- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and
- f. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

- 1 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
2 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
3 is impracticable and the disposition of their claims as a class will benefit the
4 parties and the Court;
- 5 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
6 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
7 CLASS and will apply uniformly to every member of the CALIFORNIA
8 LABOR SUB-CLASS;
- 9 c. The claims of the representative PLAINTIFF are typical of the claims of each
10 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
11 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
12 employee paid on an hourly basis who was subjected to the DEFENDANTS'
13 practice and policy which failed to pay the correct amount of wages due to the
14 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
15 a result of DEFENDANTS' employment practices. PLAINTIFF and the
16 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
17 identically harmed by the same unlawful, deceptive, unfair and pervasive pattern
18 of misconduct engaged in by DEFENDANTS; and
- 19 d. The representative PLAINTIFF will fairly and adequately represent and protect
20 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained
21 counsel who are competent and experienced in Class Action litigation. There are
22 no material conflicts between the claims of the representative PLAINTIFF and
23 the members of the CALIFORNIALABOR SUB-CLASS that would make class
24 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
25 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
26 Members.

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

- 1 a. Without class certification and determination of declaratory, injunctive, statutory
2 and other legal questions within the class format, prosecution of separate actions
3 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
4 the risk of:
- 5 i. Inconsistent or varying adjudications with respect to individual members
6 of the CALIFORNIA LABOR SUB-CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA LABOR SUB-CLASS; or
 - 9 ii. Adjudication with respect to individual members of the CALIFORNIA
10 LABOR SUB-CLASS which would as a practical matter be dispositive of
11 interests of the other members not party to the adjudication or
12 substantially impair or impede their ability to protect their interests.
- 13 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
14 refused to act on grounds generally applicable to the CALIFORNIA LABOR
15 SUB-CLASS, making appropriate class-wide relief with respect to the
16 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANTS
17 uniformly fail to pay all wages due. Including the correct wages for all time
18 worked by the members of the CALIFORNIA LABOR SUB-CLASS as required
19 by law;
- 20 c. Common questions of law and fact predominate as to the members of the
21 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
22 violations of California Law as listed above, and predominate over any question
23 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
24 Class Action is superior to other available methods for the fair and efficient
25 adjudication of the controversy, including consideration of:
- 26 i. The interests of the members of the CALIFORNIA LABOR SUB-
27 CLASS in individually controlling the prosecution or defense of separate
28 actions in that the substantial expense of individual actions will be

1 avoided to recover the relatively small amount of economic losses
2 sustained by the individual CALIFORNIA LABOR SUB-CLASS
3 Members when compared to the substantial expense and burden of
4 individual prosecution of this litigation;

5 ii. Class certification will obviate the need for unduly duplicative litigation
6 that would create the risk of:

7 1. Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA LABOR SUB-CLASS, which
9 would establish incompatible standards of conduct for the
10 DEFENDANTS; and/or,

11 2. Adjudications with respect to individual members of the
12 CALIFORNIA LABOR SUB-CLASS would as a practical matter
13 be dispositive of the interests of the other members not parties to
14 the adjudication or substantially impair or impede their ability to
15 protect their interests;

16 iii. In the context of wage litigation because a substantial number of
17 individual CALIFORNIA LABOR SUB-CLASS Members will avoid
18 asserting their legal rights out of fear of retaliation by DEFENDANTS,
19 which may adversely affect an individual's job with DEFENDANTS or
20 with a subsequent employer, the Class Action is the only means to assert
21 their claims through a representative; and,

22 iv. A class action is superior to other available methods for the fair and
23 efficient adjudication of this litigation because class treatment will
24 obviate the need for unduly and unnecessary duplicative litigation that is
25 likely to result in the absence of certification of this action pursuant to
26 Cal. Code of Civ. Proc. § 382.

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

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- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANTS' actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANTS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANTS. The CALIFORNIA

1 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were
2 employed by DEFENDANTS in California during the CALIFORNIA LABOR
3 SUB-CLASS PERIOD; and

- 4 i. Class treatment provides manageable judicial treatment calculated to bring an
5 efficient and rapid conclusion to all litigation of all wage and hour related claims
6 arising out of the conduct of DEFENDANTS as to the members of the
7 CALIFORNIA LABOR SUB-CLASS.

8 **FIRST CAUSE OF ACTION**

9 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

15 40. DEFENDANTS are a “person” as that term is defined under Cal. Bus. And Prof.
16 Code § 17021.

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

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

25 42. By the conduct alleged herein, DEFENDANTS have engaged and continues to
26 engage in a business practice which violates California law, including but not limited to, the
27 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
28 including Sections 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802, for

1 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
2 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
3 unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

27 47. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
28 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty

1 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
2 for each workday in which a second off-duty meal period was not timely provided for each ten
3 (10) hours of work.

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

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

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

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

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

27 53. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
28 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices

1 of DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated.
2 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
3 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
4 irreparable legal and economic harm unless DEFENDANTS are restrained from continuing to
5 engage in these unlawful and unfair business practices.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY MINIMUM WAGES**
8 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

9 **Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
10 **Defendants)**

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

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

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

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

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

26 59. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
27 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
28 amount of time they work. As set forth herein, DEFENDANTS' uniform policy and practice

1 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS.

3 60. DEFENDANTS' uniform pattern of unlawful wage and hour practices
4 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
5 whole, as a result of implementing a uniform policy and practice that denies accurate
6 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
7 CLASS in regards to minimum wage pay.

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

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

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

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

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

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

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

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

22 **THIRD CAUSE OF ACTION**
23 **FAILURE TO PAY OVERTIME COMPENSATION**
24 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

25 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
26 **Defendants)**

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

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

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

8 71. Cal. Lab. Code § 510 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
10 they receive additional compensation beyond their regular wages in amounts specified by law.

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

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

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

26 75. In committing these violations of the California Labor Code, DEFENDANTS
27 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
28 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANTS acted
in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of

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

3 76. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
4 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
5 receive the correct overtime compensation for their time worked for DEFENDANTS.

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

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

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

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

1 81. DEFENDANTS knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS were undercompensated for their time
3 worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
5 procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct
7 overtime wages for their overtime worked.

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

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

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FOURTH CAUSE OF ACTION

**FAILURE TO PROVIDE REQUIRED MEAL PERIODS
(Cal. Lab. Code §§ 226.7 & 512)**

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

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

85. During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which these employees were required by DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS forfeited meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

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

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

4
5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REQUIRED REST PERIODS**
7 **(Cal. Lab. Code §§ 226.7 & 512)**

8 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
9 **Defendants)**

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

13 89. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
14 Members were required to work in excess of four (4) hours without being provided ten (10)
15 minute rest periods. Further, these employees were denied their first rest periods of at least ten
16 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest
17 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,
18 and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten
19 (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
20 were also not provided with one hour wages in lieu thereof. As a result of their rigorous work
21 schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
22 periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS’
23 managers.

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

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

4
5 **SIXTH CAUSE OF ACTION**

6 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

7 **(Cal. Lab. Code §§ 2802)**

8 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
9 **Defendants)**

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

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

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

18 94. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by
19 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
20 members for required expenses incurred in the discharge of their job duties for DEFENDANTS’
21 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
22 CLASS members for expenses which included, but were not limited to, costs related to using
23 their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.
24 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
25 DEFENDANTS to use their personal cell phones for work-related business. DEFENDANTS’
26 uniform policy, practice and procedure was to not reimburse PLAINTIFF and the
27 CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal
28 cellular phones for DEFENDANTS within the course and scope of their employment for
DEFENDANTS. These expenses were necessary to complete their principal job duties.

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

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

10 **SEVENTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

12 **(Cal. Lab. Code § 226)**

13 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
14 **Defendants)**

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

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

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

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

10 98. When DEFENDANTS did not accurately record PLAINTIFF's and other
11 CALIFORNIA CLASS Members' missed meal and rest breaks, DEFENDANTS violated Cal.
12 Lab. Code § 226 in that DEFENDANTS failed to provide an accurate wage statement in writing
13 that properly and accurately itemizes all missed meal and rest periods and reporting time wages
14 owed to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and
15 thereby also failed to set forth the correct wages earned by the employees. Additionally, the
16 wage statements DEFENDANTS issued to PLAINTIFF and other CALIFORNIA CLASS
17 Members violated Cal. Lab. Code Section 226(a) in that DEFENDANTS failed to correctly list
18 the correct name of the legal entity that was the employer of PLAINTIFF and the
19 CALIFORNIA CLASS Members.

20 99. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab.
21 Code § 226, causing injury and damages to PLAINTIFF and the other members of the
22 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
23 expended calculating the correct wages for all missed meal and rest breaks and the amount of
24 employment taxes which were not properly paid to state and federal tax authorities. These
25 damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the
26 CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars
27 (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars
28 (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an

1 amount according to proof at the time of trial (but in no event more than four thousand dollars
2 (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-
3 CLASS herein).

4 **EIGHTH CAUSE OF ACTION**
5 **FAILURE TO PAY WAGES WHEN DUE**
6 **(Cal. Lab. Code § 203)**

7 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
8 **Defendants)**

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

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

13 As used in this article:

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

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

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

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

104. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
SUB-CLASS Members' employment contract.

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

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

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3. On all claims:

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

DATED: June __, 2019

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: June __, 2019

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for PLAINTIFF