

# SUMMONS (CITACION JUDICIAL)

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

HELZBERG'S DIAMOND SHOPS, LLC, a Missouri Limited Liability Company; and DOES 1-50, Inclusive,

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

EDUARDO YBARRA, an individual, on behalf of himself and on behalf of all persons similarly situated,

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

**ELECTRONICALLY FILED**  
Superior Court of California  
County of Alameda

12/03/2021

Chad Finke, Executive Officer / Clerk of the Court

By: Xian-xii Bowie Deputy

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

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

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

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

The name and address of the court is:  
(El nombre y dirección de la corte es):

Alameda Superior Court, Hayward Hall of Justice  
24405 Amador Street  
Hayward, CA 94544

CASE NUMBER:  
(Número del Caso): **21CV003531**

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203

Zakay Law Group, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 12/03/2021  
(Fecha)

Chad Finke, Executive Officer / Clerk of the Court

Clerk, by Xian-xii Bowie, Deputy  
(Secretario) (Adjunto)

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

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

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

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

[SEAL]



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Attorneys for Plaintiff EDUARDO YBARRA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ALAMEDA**

EDUARDO YBARRA, an individual, on behalf  
of himself and on behalf of all persons similarly  
situated,

Plaintiff,

v.

HELZBERG'S DIAMOND SHOPS, LLC, a  
Missouri Limited Liability Company; and  
DOES 1-50, Inclusive,

Defendants.

Case No: **21CV003531**

**CLASS ACTION COMPLAINT FOR:**

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

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

**12/03/2021 at 09:16:34 AM**

By: Xian-xii Bowie, Deputy Clerk

VIOLATION OF CAL. LAB. CODE § 226;  
and

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

8) FAILURE TO REIMBURSE  
EMPLOYEES FOR REQUIRED  
EXPENSES IN VIOLATION OF  
CALIFORNIA LABOR CODE §2802;

9) VIOLATION OF THE PRIVATE  
ATTORNEYS GENERAL ACT [LABOR  
CODE §§ 2698 ET SEQ.]

**DEMAND FOR A JURY TRIAL**

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

**THE PARTIES**

1. Defendant HELZBERG’S DIAMOND SHOPS, LLC (“DEFENDANT”) is a  
Missouri limited liability company that at all relevant times mentioned herein conducted and  
continues to conduct substantial and regular business in the state of California, county of  
Alameda, owns, operates, and/or manages a diamond and jewelry retail store.

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

3. The agents, servants, and/or employees of the Defendants and each of them  
acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its

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

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

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

18 6. PLAINTIFF was employed by DEFENDANT in California from October 2020  
19 to July 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid  
20 on an hourly basis, and entitled to the legally required meal and rest periods and payment of  
21 minimum and overtime wages due for all time worked.

22 7. PLAINTIFF brings this Class Action on behalf of himself and a California class,  
23 defined as all persons who are or previously were employed by DEFENDANT in California and  
24 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the  
25 period beginning four (4) years prior to the filing of this Complaint and ending on the date as  
26 determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate  
27 claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).  
28

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

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

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

#### 20                                   **JURISDICTION AND VENUE**

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

25           12.      Venue is proper in this Court pursuant to California Code of Civil Procedure,  
26 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and  
27 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities  
28

1 in this County and/or conducts substantial business in this County, and (ii) committed the  
2 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

### 3 **THE CONDUCT**

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

#### 23 **A. Meal Period Violations**

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

1 Members to work without paying them for all the time they were under DEFENDANTS'  
2 control. Specifically, as a result of PLAINTIFF's demanding work requirements, being required  
3 to oversee the jewelry store and assist customers, and DEFENDANT'S understaffing,  
4 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to  
5 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work  
6 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.  
7 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a  
8 result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage  
9 and overtime wages by regularly working without their time being accurately recorded and  
10 without compensation at the applicable minimum wage and overtime rates. DEFENDANTS'  
11 uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members  
12 for all time worked is evidenced by DEFENDANTS' business records.

13       15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work  
14 requirements, being required to oversee the jewelry store and assist customers, and  
15 DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA CLASS  
16 Members were from time to time unable to take thirty (30) minute off-duty meal breaks and  
17 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA  
18 CLASS Members were required from time to time to perform work as ordered by  
19 DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break.  
20 Further, DEFENDANTS from time to time failed to provide PLAINTIFF and CALIFORNIA  
21 CLASS Members with a second off-duty meal period for some workdays in which these  
22 employees were required by DEFENDANTS to work ten (10) hours of work from time to time.  
23 The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS Members  
24 does not qualify for limited and narrowly construed "on-duty" meal period exception. When  
25 they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members  
26 were, from time to time, required to remain on duty and on call. PLAINTIFF and other  
27 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional  
28 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

1     **B. Rest Period Violations**

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

17     **C. Regular Rate Violation – Overtime, Sick Pay and Meal and Rest Period Premiums**

18           17. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and  
19 continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA  
20 CLASS Members for their overtime hours worked, meal and rest period premiums, and sick  
21 pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members forfeited wages  
22 due them for working overtime without compensation at the correct overtime, meal and rest  
23 period premiums, and sick pay rates. DEFENDANTS' uniform policy and practice to not pay  
24 the PLAINTIFF and the CALIFORNIA CLASS the correct overtime rate for all overtime  
25 worked, meal and rest period premiums, and sick pay in accordance with applicable law is  
26 evidenced by DEFENDANTS' business records.

27           18. State law provides that employees must be paid overtime at one-and-one half  
28 times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were



1 compensated at an hourly rate plus incentive pay that was tied to specific elements of an  
2 employee's performance.

3         19. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
4 Member's compensation was DEFENDANTS' non-discretionary incentive program that paid  
5 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their  
6 performance for DEFENDANTS. The non-discretionary bonus program provided all  
7 employees paid on an hourly basis with bonus, and/or commission compensation when the  
8 employees met the various performance goals set by DEFENDANTS. Specifically, PLAINTIFF  
9 and the CALIFORNIA CLASS received commissions for sales of products. Additionally,  
10 DEFENDANT gave PLAINTIFF and the CALIFORNIA CLASS received bonuses when the  
11 employees met various performance goals set by DEFENDANT. The incentive payments are  
12 identified as "TSI Team Incentive," "Commission," and/or "Spiffs" in the wage statements  
13 issued by DEFENDANTS to PLAINTIFF and the other CALIFORNIA CLASS Members.

14         20. However, from-time-to-time, when calculating the regular rate of pay, in those  
15 pay periods where PLAINTIFF and the CALIFORNIA CLASS Members worked overtime and  
16 earned this non-discretionary bonus, commission, or incentive DEFENDANTS failed to  
17 accurately include the non-discretionary bonus compensation and/or commission and/or  
18 incentive paid as part of the employees' "regular rate of pay" and/or calculated all hours worked  
19 rather than just all non-overtime hours worked. Further, when calculating the regular rate of pay  
20 in order to pay sick pay to PLAINTIFF and the CALIFORNIA CLASS, DEFENDANTS failed  
21 to include the incentive compensation as part of the employees' "regular rate of pay" for  
22 purposes of calculating sick pay. Management and supervisors described the incentive/bonus  
23 program to potential and new employees as part of the compensation package. As a matter of  
24 law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS  
25 Members must be included in the "regular rate of pay." The failure to do so has resulted in a  
26 systematic underpayment of overtime and/or sick pay compensation to PLAINTIFF and other  
27 CALIFORNIA CLASS Members by DEFENDANTS.

21. As a matter of law, the incentive and commission compensation received by PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly calculated into the “regular rate of pay” for purposes of overtime compensation, meal and rest period premiums, and sick pay. DEFENDANTS’ failure to do so has resulted in DEFENDANTS’ systematic underpayment of overtime compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other CALIFORNIA CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time for non-employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in that workweek. DEFENDANT’S conduct, as articulated herein, by failing to include the incentive compensation as part of the “regular rate of pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246.

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

**D. Unreimbursed Business Expenses**

23. DEFENDANTS as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are required

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

7       24. In the course of their employment, DEFENDANTS required PLAINTIFF and  
8 other CALIFORNIA CLASS Members to use their personal cell phone to contact jewelry repair  
9 services as a result of and in furtherance of their job duties as employees for DEFENDANT. But  
10 for the use of their own personal cell phones, PLAINTIFF and the CALIFORNIA CLASS  
11 Members could not complete their essential job duties. Furthermore, PLAINTIFF and other  
12 CALIFORNIA CLASS Members were required to drive their personal vehicle to and from the  
13 bank on behalf of DEFENDANTS. However, DEFENDANTS unlawfully failed to reimburse  
14 PLAINTIFF and other CALIFORNIA CLASS Members for their use of their personal cell  
15 phones and personal vehicles. As a result, in the course of their employment with  
16 DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members incurred  
17 unreimbursed business expenses, but were not limited to, costs related to the use of their  
18 personal cellular phones and personal vehicles, all on behalf of and for the benefit of  
19 DEFENDANT.

20       **E. Wage Statement Violations**

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

1 during the pay period and the corresponding number of hours worked at each hourly rate by the  
2 employee.

3         26. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
4 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed  
5 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also  
6 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and  
7 accurate wage statements which failed to show, among other things, the total hours worked and  
8 all applicable hourly rates in effect during the pay period and the corresponding amount of time  
9 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest  
10 periods.

11         27. For instance, PLAINTIFF received remuneration from DEFENDANTS  
12 described as “Commission,” “TSI Team Incentive,” and “Spiffs.” DEFENDANTS violated  
13 California Labor Codes section 226 by failing to list the applicable hourly rate and the  
14 corresponding number of hours worked at the applicable hourly rate for these line items of  
15 remuneration described as “Commission,” “TSI Team Incentive,” and “Spiffs”. PLAINTIFF,  
16 and all those similarly situated CALIFORNIA CLASS Members, suffered damage as a result of  
17 DEFENDANTS’ aforementioned violation because he could not promptly and easily determine  
18 from the wage statement alone the applicable hourly rate and the corresponding number of  
19 hours worked at the applicable hourly rate for this line item of remuneration described as  
20 “Commission,” “TSI Team Incentive,” and “Spiffs”.

21         28. In addition to the violations described above, DEFENDANTS, from time to time,  
22 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements  
23 that comply with Cal. Lab. Code § 226. Specifically, DEFENDANTS failed to include the  
24 correct total number of hours worked on the wage statements.

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

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

2           30. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and  
3 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA  
4 CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required  
5 PLAINTIFF and the other members of the CALIFORNIA CLASS to perform off-the-clock pre-  
6 shift and post-shift work. Additionally, as a condition of employment, required these employees  
7 from time to time to wait and submit to loss prevention inspections after clocking out at the end  
8 of each scheduled shift, and if they left the store during off duty meal periods, for which  
9 DEFENDANT did not provide compensation for the time spent waiting for and submitting to  
10 DEFENDANT's loss prevention inspections off the clock. Notwithstanding, from time-to-time  
11 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS  
12 necessary wages for attending for performing work at DEFENDANTS' direction, request and  
13 benefit, while off-the clock.

14           31. During the CLASS PERIOD, from time-to-time DEFENDANTS required  
15 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work,  
16 including but not limited to, setting up the store prior to business hours, which included  
17 contacting the security company to unlock the door, disarm the store alarm and wait for the  
18 punch out system to boot up before being able to clock in.. This resulted in PLAINTIFF and  
19 other members of the CALIFORNIA CLASS to have to work while off-the-clock.

20           32. DEFENDANTS directed and directly benefited from the uncompensated off-the-  
21 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

22           33. DEFENDANTS controlled the work schedules, duties, protocols, applications,  
23 assignments, and employment conditions of PLAINTIFF and the other members of the  
24 CALIFORNIA CLASS.

25           34. DEFENDANTS were able to track the amount of time PLAINTIFF and the other  
26 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to  
27 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all  
28

1 wages earned and owed for all the work they performed, including pre-shift, post shift and  
2 during meal period off-the-clock work.

3 35. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-  
4 exempt employees, subject to the requirements of the California Labor Code.

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

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

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

### 19 **G. CLASS ACTION ALLEGATIONS**

20 39. PLAINTIFF brings the First through Eighth Causes of Action as a class action  
21 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS'  
22 current and former non-exempt California employees ("CALIFORNIA CLASS") during the  
23 period beginning four years prior to the filing of the Complaint and ending on a date determined  
24 by the Court ("CLASS PERIOD").

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

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

4 41. The members of the class are so numerous that joinder of all class members is  
5 impractical.

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

- 15 a. Whether DEFENDANTS maintained legally compliant meal period policies and  
16 practices;
- 17 b. Whether DEFENDANTS maintained legally compliant rest period policies and  
18 practices;
- 19 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA  
20 CLASS Members accurate premium payments for missed meal and rest periods;
- 21 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA  
22 CLASS Members accurate overtime wages;
- 23 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA  
24 CLASS Members at least minimum wage for all hours worked;
- 25 f. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA  
26 CLASS Members for required business expenses;
- 27 g. Whether DEFENDANTS issued legally compliant wage statements;
- 28

- 1           h. Whether DEFENDANTS failed to pay PLAINTIFF and other CALIFORNIA  
2           CLASS Members accurate reporting time wages;
- 3           i. Whether DEFENDANTS committed an act of unfair competition by  
4           systematically failing to record and pay PLAINTIFF and the other members of  
5           the CALIFORNIA CLASS for all time worked;
- 6           j. Whether DEFENDANTS committed an act of unfair competition by  
7           systematically failing to record all meal and rest breaks missed by PLAINTIFF  
8           and other CALIFORNIA CLASS Members, even though DEFENDANTS  
9           enjoyed the benefit of this work, required employees to perform this work and  
10          permits or suffers to permit this work;
- 11          k. Whether DEFENDANTS committed an act of unfair competition in violation of  
12          the UCL, by failing to provide the PLAINTIFF and the other members of the  
13          CALIFORNIA CLASS with the legally required meal and rest periods.
- 14          43. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as  
15          a result of DEFENDANTS' conduct and actions alleged herein.
- 16          44. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has  
17          the same interests as the other members of the class.
- 18          45. PLAINTIFF will fairly and adequately represent and protect the interests of the  
19          CALIFORNIA CLASS Members.
- 20          46. 40. PLAINTIFF retained able class counsel with extensive experience in  
21          class action litigation.
- 22          47. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the  
23          interests of the other CALIFORNIA CLASS Members.
- 24          48. 42. There is a strong community of interest among PLAINTIFF and the  
25          members of the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of  
26          DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA  
27          CLASS for the injuries sustained.
- 28



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

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

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

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

### FIRST CAUSE OF ACTION

## Unlawful Business Practices

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

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

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

1           53.     DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
2 Code § 17021.

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

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

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

21           56.     By the conduct alleged herein, DEFENDANT’s practices were unlawful and  
22 unfair in that these practices violated public policy, were immoral, unethical, oppressive  
23 unscrupulous or substantially injurious to employees, and were without valid justification or  
24 utility for which this Court should issue equitable and injunctive relief pursuant to Section  
25 17203 of the California Business & Professions Code, including restitution of wages wrongfully  
26 withheld.

27           57.     By the conduct alleged herein, DEFENDANT’s practices were deceptive and  
28 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally

1 mandated meal and rest periods and the required amount of compensation for missed meal and  
2 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the  
3 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.  
4 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable  
5 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully  
6 withheld.

7         58. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
8 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the  
9 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
10 DEFENDANT.

11         59. By the conduct alleged herein, DEFENDANT's practices were also unfair and  
12 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide  
13 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS  
14 members as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

11           65. PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
12 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,  
13 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
14 engaging in any unlawful and unfair business practices in the future.

15           66. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
16 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices  
17 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As  
18 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the  
19 other members of the CALIFORNIA CLASS have suffered and will continue to suffer  
20 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to  
21 engage in these unlawful and unfair business practices.

## 22                                   **SECOND CAUSE OF ACTION**

### 23                                   **Failure To Pay Minimum Wages**

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

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

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

1           68.     PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim  
2 for DEFENDANT’S willful and intentional violations of the California Labor Code and the  
3 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately  
4 calculate and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

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

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

12          72.     DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and  
13 the other members of the CALIFORNIA CLASS without regard to the correct amount of time  
14 they worked. As set forth herein, DEFENDANT’S uniform policy and practice was to  
15 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other  
16 members of the CALIFORNIA CLASS.

17          73.     DEFENDANT’S uniform pattern of unlawful wage and hour practices  
18 manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result  
19 of implementing a uniform policy and practice that denied accurate compensation to  
20 PLAINTIFF and the other members of the CALIFORNIA CLASS in regards to minimum wage  
21 pay.

22          74.     In committing these violations of the California Labor Code, DEFENDANT  
23 inaccurately calculated the amount of time worked and consequently underpaid the actual time  
24 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted  
25 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of  
26 the California Labor Code, the Industrial Welfare Commission requirements and other  
27 applicable laws and regulations.  
28

1           75.     As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,  
2 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
3 minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

27           80.     PLAINTIFF and the other members of the CALIFORNIA CLASS therefore  
28 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the

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

### 10 **THIRD CAUSE OF ACTION**

#### 11 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

5           86.     During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members  
6 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time  
7 they worked, including overtime work.

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

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

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

24           90.     Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
25 from the overtime requirements of the law. None of these exemptions are applicable to the  
26 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and  
27 the other members of the CALIFORNIA CLASS were not subject to a valid collective  
28 bargaining agreement that would preclude the causes of action contained herein this Complaint.



1 Rather, PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA CLASS  
2 based on DEFENDANT's violations of non- negotiable, non-waivable rights provided by the  
3 State of California.

4 91. During the CLASS PERIOD, PLAINTIFF and the other members of the  
5 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,  
6 constituting a failure to pay all earned wages.

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

13 93. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned  
14 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all  
15 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA  
16 CLASS have suffered and will continue to suffer an economic injury in amounts which are  
17 presently unknown to them, and which will be ascertained according to proof at trial.

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

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

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

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

#### 15 **FOURTH CAUSE OF ACTION**

##### 16 **Failure To Provide Required Meal Periods**

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

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

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

22 98. During the CLASS PERIOD, DEFENDANT failed to provide all the legally  
23 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as  
24 required by the applicable Wage Order and Labor Code. The nature of the work performed by  
25 PLAINTIFF and CALIFORNIA CLASS MEMBERS did not prevent these employees from  
26 being relieved of all of their duties for the legally required off-duty meal periods. As a result of  
27 their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were  
28 often not fully relieved of duty by DEFENDANT for their meal periods. Additionally,

1 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with  
2 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by  
3 DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF and  
4 CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in  
5 which these employees were required by DEFENDANT to work ten (10) hours of work. As a  
6 result, PLAINTIFF and other members of the CALIFORNIA CLASS forfeited meal breaks  
7 without additional compensation and in accordance with DEFENDANT's strict corporate policy  
8 and practice.

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

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

### 17 **FIFTH CAUSE OF ACTION**

#### 18 **Failure To Provide Required Rest Periods**

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

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

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

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

1 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or  
2 more. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-  
3 hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other  
4 CALIFORNIA CLASS Members were periodically denied their proper rest periods by  
5 DEFENDANT and DEFENDANT's managers. In addition, because of DEFENDANT's pay  
6 plan for PLAINTIFF and CALIFORNIA CLASS Members (being paid a flat rate only),  
7 DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA CLASS Members for their  
8 rest periods as required by the applicable Wage Order and Labor Code. DEFENDANT did not  
9 have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other  
10 CALIFORNIA CLASS Members when they worked as non-exempt sales employees. As a  
11 result, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS  
12 Members with all the legally required paid rest periods is evidenced by DEFENDANT's  
13 business records.

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

19 104. As a proximate result of the aforementioned violations, PLAINTIFF and  
20 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,  
21 and seek all wages earned and due, interest, penalties, expenses and costs of suit.  
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1           107. When DEFENDANT did not accurately record PLAINTIFF's and other  
2 CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, and separately  
3 compensated rest periods, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT  
4 failed to provide an accurate wage statement in writing that properly and accurately itemizes all  
5 wages, and missed meal and rest periods and reporting time wages owed to PLAINTIFF and the  
6 other members of the CALIFORNIA CLASS and thereby also failed to set forth the correct  
7 wages earned by the employees.

8           108. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code  
9 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA  
10 CLASS. These damages include, but are not limited to, costs expended calculating the correct  
11 wages for all missed meal and rest breaks and the amount of employment taxes which were not  
12 properly paid to state and federal tax authorities. These damages are difficult to estimate.  
13 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to  
14 recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the  
15 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay  
16 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial  
17 (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each  
18 respective member of the CALIFORNIA CLASS herein).

19                                   **SEVENTH CAUSE OF ACTION**

20                                   **Failure To Pay Wages When Due**

21                                   **(Cal. Lab. Code §§ 203)**

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

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

26           110. Cal. Lab. Code § 200 provides that:

27                   As used in this article:  
28

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

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

10 112. Cal. Lab. Code § 202 provides, in relevant part, that:

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

20 113. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS  
21 Members' employment contract.

22 114. Cal. Lab. Code § 203 provides:

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

28 115. The employment of PLAINTIFF and many CALIFORNIA CLASS Members  
terminated, and DEFENDANT has not tendered payment of wages to these employees who  
were underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks,  
as required by law.

116. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the  
members of the CALIFORNIA CLASS whose employment has terminated, PLAINTIFF  
demand up to thirty (30) days of pay as penalty for not paying all wages due at time of  
termination for all employees who terminated employment during the CLASS PERIOD and

1 demand an accounting and payment of all wages due, plus interest and statutory costs as  
2 allowed by law.

3 **EIGHTH CAUSE OF ACTION**

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

5 **(Cal. Lab. Code §§ 2802)**

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

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

10 118. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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



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

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

7 **NINTH CAUSE OF ACTION**

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

9 **(Cal. Lab. Code §§2698 et seq.)**

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

11 121. PLAINTIFF realleges and incorporates by this reference, as though fully set forth  
12 herein, the prior paragraphs of this Complaint.

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

23 123. PLAINTIFF, and such persons that may be added from time to time who satisfy  
24 the requirements and exhaust the administrative procedures under the Private Attorney General  
25 Act, bring this Representative Action on behalf of the State of California with respect to  
26 themselves and all individuals who are or previously were employed by DEFENDANT and  
27 classified as non-exempt employees in California during the time period of September 27, 2020  
28 until the present (the "AGGRIEVED EMPLOYEES").

1           124. On September 27, 2021, PLAINTIFF gave written notice by certified mail to the  
2 Labor and Workforce Development Agency (the "Agency") and the employer of the  
3 specific provisions of this code alleged to have been violated as required by Labor Code §  
4 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The  
5 statutory waiting period for Plaintiff to add these allegations to the Complaint has expired. As  
6 a result, pursuant to Section 2699.3, Plaintiff may now commence a representative civil action  
7 under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all  
8 AGGRIEVED EMPLOYEES as herein defined.

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

23                                   **PRAYER FOR RELIEF**

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

26           1. On behalf of the CALIFORNIA CLASS:

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

- b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
- d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

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

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private


Attorneys General Act of 2004

4. On all claims:

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

DATED: December 1, 2021

**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: December 1, 2021

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for PLAINTIFF

# **EXHIBIT 1**



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #42001

September 27, 2021

**Via Online Filing to LWDA and Certified Mail to Defendants**

**Labor and Workforce Development Agency**

Online Filing

**HELZBERG'S DIAMOND SHOPS, LLC**

c/o CSC – Lawyers Incorporating Service

2710 Gateway Oaks Drive, Suite 150N

Sacramento, CA 95833

***Via Certified Mail with Return Receipt No. 7021 0350 0000 8465 3004***

**Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, 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 EDUARDO YBARRA (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant HELZBERG’S DIAMOND SHOPS, LLC (“Defendant”). Plaintiff was employed by Defendant in California between October of 2020 to July of 2021 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

**Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant in California during the relevant claim period.**

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.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

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

Shani O. Zakay  
Attorney for Plaintiff

**ZAKAY LAW GROUP, APLC**  
Shani O. Zakay (State Bar #277924)  
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**JCL LAW FIRM, APC**  
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[jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA**

EDUARDO YBARRA, an individual, on  
behalf of himself and on behalf of all persons  
similarly situated,

Plaintiff,

v.

HELZBERG'S DIAMOND SHOPS, LLC, a  
Missouri Limited Liability Company; and  
DOES 1-50, Inclusive,

Defendants.

Case No:

**CLASS ACTION COMPLAINT FOR:**

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

**DEMAND FOR A JURY TRIAL**



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

4 **THE PARTIES**

5 1. Defendant HELZBERG’S DIAMOND SHOPS, LLC (“DEFENDANT”) is a  
6 Missouri limited liability company that at all relevant times mentioned herein conducted and  
7 continues to conduct substantial and regular business in the state of California, county of  
8 Alameda, owns, operates, and/or manages a diamond and jewelry retail store.

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

19 3. The agents, servants, and/or employees of the Defendants and each of them  
20 acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its  
21 authority as the agent, servant and/or employee of the Defendants, and personally participated in  
22 the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged  
23 herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants  
24 and all Defendants are jointly and severally liable to PLAINTIFF and the other members of the  
25 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the  
26 Defendants’ agents, servants and/or employees.

27 4. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of  
28 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or  
caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any  
provision regulating hours and days of work in any order of the Industrial Welfare Commission

1 and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor  
2 Code § 558, at all relevant times.

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

8 6. PLAINTIFF was employed by DEFENDANT in California from October 2020  
9 to July 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid  
10 on an hourly basis, and entitled to the legally required meal and rest periods and payment of  
11 minimum and overtime wages due for all time worked.

12 7. PLAINTIFF brings this Class Action on behalf of himself and a California class,  
13 defined as all persons who are or previously were employed by DEFENDANT in California and  
14 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the  
15 period beginning four (4) years prior to the filing of this Complaint and ending on the date as  
16 determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate  
17 claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

1           9.     DEFENDANTS' uniform policies and practices alleged herein were unlawful,  
2 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain  
3 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

4           10.    PLAINTIFF and the other members of the CALIFORNIA CLASS seek an  
5 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named  
6 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically  
7 injured by DEFENDANTS's past and current unlawful conduct, and all other appropriate legal  
8 and equitable relief

### 9 10                                   **JURISDICTION AND VENUE**

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

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

### 20                                   **THE CONDUCT**

21           13.    In violation of the applicable sections of the California Labor Code and the  
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a  
23 matter of company policy, practice and procedure, intentionally, knowingly and systematically  
24 failed to provide legally compliant meal and rest periods, failed to accurately compensate  
25 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest  
26 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all  
27 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF  
28 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,

1 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest  
2 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS  
3 Members for business expenses, and failed to issue to PLAINTIFF and the members of the  
4 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things,  
5 all applicable hourly rates in effect during the pay periods and the corresponding amount of time  
6 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to  
7 purposefully avoid the accurate and full payment for all time worked as required by California  
8 law which allows DEFENDANTS to illegally profit and gain an unfair advantage over  
9 competitors who comply with the law. To the extent equitable tolling operates to toll claims by  
10 the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted  
11 accordingly.

12 **A. Meal Period Violations**

13 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS  
14 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time  
15 worked, meaning the time during which an employee is subject to the control of an employer,  
16 including all the time the employee is suffered or permitted to work. From time-to-time during  
17 the CLASS PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS  
18 Members to work without paying them for all the time they were under DEFENDANTS'  
19 control. Specifically, as a result of PLAINTIFF's demanding work requirements, being required  
20 to oversee the jewelry store and assist customers, and DEFENDANT'S understaffing,  
21 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to  
22 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work  
23 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.  
24 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a  
25 result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage  
26 and overtime wages by regularly working without their time being accurately recorded and  
27 without compensation at the applicable minimum wage and overtime rates. DEFENDANTS'  
28

1 uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members  
2 for all time worked is evidenced by DEFENDANTS' business records.

3 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work  
4 requirements, being required to oversee the jewelry store and assist customers, and  
5 DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA CLASS  
6 Members were from time to time unable to take thirty (30) minute off-duty meal breaks and  
7 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA  
8 CLASS Members were required from time to time to perform work as ordered by  
9 DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break.  
10 Further, DEFENDANTS from time to time failed to provide PLAINTIFF and CALIFORNIA  
11 CLASS Members with a second off-duty meal period for some workdays in which these  
12 employees were required by DEFENDANTS to work ten (10) hours of work from time to time.  
13 The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS Members  
14 does not qualify for limited and narrowly construed "on-duty" meal period exception. When  
15 they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members  
16 were, from time to time, required to remain on duty and on call. PLAINTIFF and other  
17 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional  
18 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

19 **B. Rest Period Violations**

20 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other  
21 CALIFORNIA CLASS members were also required from time to time to work in excess of four  
22 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work  
23 requirements, being required to oversee the jewelry store and assist customers, and  
24 DEFENDANTS' inadequate staffing. Further, for the same reasons these employees were  
25 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two  
26 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes  
27 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,  
28 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours

1 or more from time to time. When they were provided with rest breaks, PLAINTIFF and other  
2 CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or on  
3 call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-  
4 hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS'  
5 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to  
6 time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

7 **C. Regular Rate Violation – Overtime, Sick Pay and Meal and Rest Period Premiums**

8 17. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and  
9 continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA  
10 CLASS Members for their overtime hours worked, meal and rest period premiums, and sick  
11 pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members forfeited wages  
12 due them for working overtime without compensation at the correct overtime, meal and rest  
13 period premiums, and sick pay rates. DEFENDANTS' uniform policy and practice to not pay  
14 the PLAINTIFF and the CALIFORNIA CLASS the correct overtime rate for all overtime  
15 worked, meal and rest period premiums, and sick pay in accordance with applicable law is  
16 evidenced by DEFENDANTS' business records.

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

21 19. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
22 Member's compensation was DEFENDANTS' non-discretionary incentive program that paid  
23 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their  
24 performance for DEFENDANTS. The non-discretionary bonus program provided all  
25 employees paid on an hourly basis with bonus, and/or commission compensation when the  
26 employees met the various performance goals set by DEFENDANTS. Specifically, PLAINTIFF  
27 and the CALIFORNIA CLASS received commissions for sales of products. Additionally,  
28 DEFENDANT gave PLAINTIFF and the CALIFORNIA CLASS received bonuses when the

1 employees met various performance goals set by DEFENDANT. The incentive payments are  
2 identified as “TSI Team Incentive,” “Commission,” and/or “Spiffs” in the wage statements  
3 issued by DEFENDANTS to PLAINTIFF and the other CALIFORNIA CLASS Members.

4         20. However, from-time-to-time, when calculating the regular rate of pay, in those  
5 pay periods where PLAINTIFF and the CALIFORNIA CLASS Members worked overtime and  
6 earned this non-discretionary bonus, commission, or incentive DEFENDANTS failed to  
7 accurately include the non-discretionary bonus compensation and/or commission and/or  
8 incentive paid as part of the employees’ “regular rate of pay” and/or calculated all hours worked  
9 rather than just all non-overtime hours worked. Further, when calculating the regular rate of pay  
10 in order to pay sick pay to PLAINTIFF and the CALIFORNIA CLASS, DEFENDANTS failed  
11 to include the incentive compensation as part of the employees’ “regular rate of pay” for  
12 purposes of calculating sick pay. Management and supervisors described the incentive/bonus  
13 program to potential and new employees as part of the compensation package. As a matter of  
14 law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS  
15 Members must be included in the “regular rate of pay.” The failure to do so has resulted in a  
16 systematic underpayment of overtime and/or sick pay compensation to PLAINTIFF and other  
17 CALIFORNIA CLASS Members by DEFENDANTS.

18         21. As a matter of law, the incentive and commission compensation received by  
19 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly  
20 calculated into the “regular rate of pay” for purposes of overtime compensation, meal and rest  
21 period premiums, and sick pay. DEFENDANTS’ failure to do so has resulted in  
22 DEFENDANTS’ systematic underpayment of overtime compensation, meal and rest period  
23 premiums, and sick pay to PLAINTIFF and other CALIFORNIA CLASS members.  
24 Specifically, California Labor Code Section 246 mandates that paid sick time for non-  
25 employees shall be calculated in the same manner as the regular rate of pay for the workweek in  
26 which the non-exempt employee uses paid sick time, whether or not the employee actually  
27 works overtime in that workweek. DEFENDANT’S conduct, as articulated herein, by failing to  
28

1 include the incentive compensation as part of the “regular rate of pay” for purposes of sick pay  
2 compensation was in violation of Cal. Lab. Code § 246.

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

13         **D. Unreimbursed Business Expenses**

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

25         24. In the course of their employment, DEFENDANTS required PLAINTIFF and  
26 other CALIFORNIA CLASS Members to use their personal cell phone to contact jewelry repair  
27 services as a result of and in furtherance of their job duties as employees for DEFENDANT. But  
28 for the use of their own personal cell phones, PLAINTIFF and the CALIFORNIA CLASS



1 Members could not complete their essential job duties. Furthermore, PLAINTIFF and other  
2 CALIFORNIA CLASS Members were required to drive their personal vehicle to and from the  
3 bank on behalf of DEFENDANTS. However, DEFENDANTS unlawfully failed to reimburse  
4 PLAINTIFF and other CALIFORNIA CLASS Members for their use of their personal cell  
5 phones and personal vehicles. As a result, in the course of their employment with  
6 DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members incurred  
7 unreimbursed business expenses, but were not limited to, costs related to the use of their  
8 personal cellular phones and personal vehicles, all on behalf of and for the benefit of  
9 DEFENDANT.

10 **E. Wage Statement Violations**

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

20 26. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
21 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed  
22 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also  
23 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and  
24 accurate wage statements which failed to show, among other things, the total hours worked and  
25 all applicable hourly rates in effect during the pay period and the corresponding amount of time  
26 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest  
27 periods.  
28

1           27. For instance, PLAINTIFF received remuneration from DEFENDANTS  
2 described as “Commission,” “TSI Team Incentive,” and “Spiffs.” DEFENDANTS violated  
3 California Labor Codes section 226 by failing to list the applicable hourly rate and the  
4 corresponding number of hours worked at the applicable hourly rate for these line items of  
5 remuneration described as “Commission,” “TSI Team Incentive,” and “Spiffs”. PLAINTIFF,  
6 and all those similarly situated CALIFORNIA CLASS Members, suffered damage as a result of  
7 DEFENDANTS’ aforementioned violation because he could not promptly and easily determine  
8 from the wage statement alone the applicable hourly rate and the corresponding number of  
9 hours worked at the applicable hourly rate for this line item of remuneration described as  
10 “Commission,” “TSI Team Incentive,” and “Spiffs”.

11           28. In addition to the violations described above, DEFENDANTS, from time to time,  
12 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements  
13 that comply with Cal. Lab. Code § 226. Specifically, DEFENDANTS failed to include the  
14 correct total number of hours worked on the wage statements.

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

19       **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

20           30. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and  
21 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA  
22 CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required  
23 PLAINTIFF and the other members of the CALIFORNIA CLASS to perform off-the-clock pre-  
24 shift and post-shift work. Additionally, as a condition of employment, required these employees  
25 from time to time to wait and submit to loss prevention inspections after clocking out at the end  
26 of each scheduled shift, and if they left the store during off duty meal periods, for which  
27 DEFENDANT did not provide compensation for the time spent waiting for and submitting to  
28 DEFENDANT’s loss prevention inspections off the clock. Notwithstanding, from time-to-time

1 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS  
2 necessary wages for attending for performing work at DEFENDANTS' direction, request and  
3 benefit, while off-the clock.

4 31. During the CLASS PERIOD, from time-to-time DEFENDANTS required  
5 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work,  
6 including but not limited to, setting up the store prior to business hours, which included  
7 contacting the security company to unlock the door, disarm the store alarm and wait for the  
8 punch out system to boot up before being able to clock in.. This resulted in PLAINTIFF and  
9 other members of the CALIFORNIA CLASS to have to work while off-the-clock.

10 32. DEFENDANTS directed and directly benefited from the uncompensated off-the-  
11 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

15 34. DEFENDANTS were able to track the amount of time PLAINTIFF and the other  
16 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to  
17 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all  
18 wages earned and owed for all the work they performed, including pre-shift, post shift and  
19 during meal period off-the-clock work.

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

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

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

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

#### **G. CLASS ACTION ALLEGATIONS**

39. PLAINTIFF brings the First through Eighth Causes of Action as a class action pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current and former non-exempt California employees ("CALIFORNIA CLASS") during the period beginning four years prior to the filing of the Complaint and ending on a date determined by the Court ("CLASS PERIOD").

40. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal and rest period policies, failure to separately compensate rest periods, failed to reimburse for business expenses, failed compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

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

42. Common questions of law and fact regarding DEFENDANTS' conduct, including but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failing to provide legally compliant meal and rest periods, failed to reimburse for business

1 expenses, failure to provide accurate itemized wage statements accurate, and failure to ensure  
2 they are paid at least minimum wage and overtime, exist as to all members of the class and  
3 predominate over any questions affecting solely any individual members of the class. Among  
4 the questions of law and fact common to the class are:

- 5 a. Whether DEFENDANTS maintained legally compliant meal period policies and  
6 practices;
- 7 b. Whether DEFENDANTS maintained legally compliant rest period policies and  
8 practices;
- 9 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA  
10 CLASS Members accurate premium payments for missed meal and rest periods;
- 11 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA  
12 CLASS Members accurate overtime wages;
- 13 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA  
14 CLASS Members at least minimum wage for all hours worked;
- 15 f. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA  
16 CLASS Members for required business expenses;
- 17 g. Whether DEFENDANTS issued legally compliant wage statements;
- 18 h. Whether DEFENDANTS failed to pay PLAINTIFF and other CALIFORNIA  
19 CLASS Members accurate reporting time wages;
- 20 i. Whether DEFENDANTS committed an act of unfair competition by  
21 systematically failing to record and pay PLAINTIFF and the other members of  
22 the CALIFORNIA CLASS for all time worked;
- 23 j. Whether DEFENDANTS committed an act of unfair competition by  
24 systematically failing to record all meal and rest breaks missed by PLAINTIFF  
25 and other CALIFORNIA CLASS Members, even though DEFENDANTS  
26 enjoyed the benefit of this work, required employees to perform this work and  
27 permits or suffers to permit this work;
- 28

1 k. Whether DEFENDANTS committed an act of unfair competition in violation of  
2 the UCL, by failing to provide the PLAINTIFF and the other members of the  
3 CALIFORNIA CLASS with the legally required meal and rest periods.

4 43. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as  
5 a result of DEFENDANTS' conduct and actions alleged herein.

6 44. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has  
7 the same interests as the other members of the class.

8 45. PLAINTIFF will fairly and adequately represent and protect the interests of the  
9 CALIFORNIA CLASS Members.

10 46. 40. PLAINTIFF retained able class counsel with extensive experience in  
11 class action litigation.

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

14 48. 42. There is a strong community of interest among PLAINTIFF and the  
15 members of the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of  
16 DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA  
17 CLASS for the injuries sustained.

18 49. The questions of law and fact common to the CALIFORNIA CLASS Members  
19 predominate over any questions affecting only individual members, including legal and factual  
20 issues relating to liability and damages.

21 50. A class action is superior to other available methods for the fair and efficient  
22 adjudication of this controversy because joinder of all class members is impractical. Moreover,  
23 since the damages suffered by individual members of the class may be relatively small, the  
24 expense and burden of individual litigation makes it practically impossible for the members of  
25 the class individually to redress the wrongs done to them. Without class certification and  
26 determination of declaratory, injunctive, statutory and other legal questions within the class  
27 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS  
28 will create the risk of:

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

8 51. Class treatment provides manageable judicial treatment calculated to bring an  
9 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of  
10 the conduct of DEFENDANTS.

11 ///

12 **FIRST CAUSE OF ACTION**

13 **Unlawful Business Practices**

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

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

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

19 53. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
20 Code § 17021.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

## 12                                   **SECOND CAUSE OF ACTION**

### 13                                   **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

8           73. DEFENDANT'S uniform pattern of unlawful wage and hour practices  
9 manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result  
10 of implementing a uniform policy and practice that denied accurate compensation to  
11 PLAINTIFF and the other members of the CALIFORNIA CLASS in regards to minimum wage  
12 pay.

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

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

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

25           77. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned  
26 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true  
27 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have  
28

1 suffered and will continue to suffer an economic injury in amounts which are presently  
2 unknown to them, and which will be ascertained according to proof at trial.

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

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

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

1 **THIRD CAUSE OF ACTION**

2 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

26 87. DEFENDANT's uniform pattern of unlawful wage and hour practices  
27 manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result  
28 of implementing a uniform policy and practice that failed to accurately record overtime worked

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

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

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

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

22 91. During the CLASS PERIOD, PLAINTIFF and the other members of the  
23 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,  
24 constituting a failure to pay all earned wages.

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

1 work, and did in fact work, overtime as to which DEFENDANT failed to accurately record and  
2 pay as evidenced by DEFENDANT's business records and witnessed by employees.

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

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

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

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

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

5  
6 **FOURTH CAUSE OF ACTION**

7 **Failure To Provide Required Meal Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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



99. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA 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.

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

### **FIFTH CAUSE OF ACTION**

## Failure To Provide Required Rest Periods

**(Cal. Lab. Code §§ 226.7 & 512)**

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

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

102. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers. In addition, because of DEFENDANT's pay plan for PLAINTIFF and CALIFORNIA CLASS Members (being paid a flat rate only), DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA CLASS Members for their rest periods as required by the applicable Wage Order and Labor Code. DEFENDANT did not

1 have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other  
2 CALIFORNIA CLASS Members when they worked as non-exempt sales employees. As a  
3 result, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS  
4 Members with all the legally required paid rest periods is evidenced by DEFENDANT's  
5 business records.

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

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

#### 14 **SIXTH CAUSE OF ACTION**

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

16 **(Cal. Lab. Code §§ 226)**

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

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

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

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

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

107. When DEFENDANT did not accurately record PLAINTIFF's and other CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, and separately compensated rest periods, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that properly and accurately itemizes all wages, and missed meal and rest periods and reporting time wages owed to PLAINTIFF and the other members of the CALIFORNIA CLASS and thereby also failed to set forth the correct wages earned by the employees.

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

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

#### 4 **SEVENTH CAUSE OF ACTION**

##### 5 **Failure To Pay Wages When Due**

6 **(Cal. Lab. Code §§ 203)**

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

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

11 110. Cal. Lab. Code § 200 provides that:

12 As used in this article:

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

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

22 112. Cal. Lab. Code § 202 provides, in relevant part, that:

23 If an employee not having a written contract for a definite period quits his or her  
24 employment, his or her wages shall become due and payable not later than 72 hours  
25 thereafter, unless the employee has given 72 hours previous notice of his or her intention  
26 to quit, in which case the employee is entitled to his or her wages at the time of quitting.  
27 Notwithstanding any other provision of law, an employee who quits without providing a  
28 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.

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

114. Cal. Lab. Code § 203 provides:

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

4 115. The employment of PLAINTIFF and many CALIFORNIA CLASS Members  
5 terminated, and DEFENDANT has not tendered payment of wages to these employees who  
6 were underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks,  
7 as required by law.

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

#### 14 **EIGHTH CAUSE OF ACTION**

##### 15 **Failure To Reimburse Employees For Required Expenses**

16 **(Cal. Lab. Code §§ 2802)**

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

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

21 118. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

25 119. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal.  
26 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the  
27 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for  
28 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of

1 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to  
2 using their personal cellular phone all on behalf of and for the benefit of DEFENDANTS.  
3 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by  
4 DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf  
5 of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not  
6 reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting  
7 from using their personal cellular phones for DEFENDANTS within the course and scope of  
8 their employment for DEFENDANTS. These expenses were necessary to complete their  
9 principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any  
10 waiver of their expectation. Although these expenses were necessary expenses incurred by  
11 PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANTS failed to  
12 indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for these  
13 expenses as an employer is required to do under the laws and regulations of California.

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

18  
19 **PRAYER FOR RELIEF**

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

22  
23 1. On behalf of the CALIFORNIA CLASS:

- 24 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA  
25 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;  
26 b. An order temporarily, preliminarily and permanently enjoining and restraining  
27 DEFENDANT from engaging in similar unlawful conduct as set forth herein;  
28 c. An order requiring DEFENDANT to pay all overtime wages and all sums

unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and

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

2. On behalf of the CALIFORNIA CLASS:

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

b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;

c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

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

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

3. On all claims:

a. An award of interest, including prejudgment interest at the legal rate;

b. Such other and further relief as the Court deems just and equitable; and

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

1 DATED: December 1, 2021

2 **ZAKAY LAW GROUP, APLC**

3  
4 By: 

5 Shani O. Zakay  
6 Attorney for PLAINTIFF

7 **DEMAND FOR A JURY TRIAL**

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

9  
10 DATED: December 1, 2021

11 **ZAKAY LAW GROUP, APLC**

12  
13 By: 

14 Shani O. Zakay  
15 Attorney for PLAINTIFF  
16  
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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Heizberg's Diamond Shops, LLC  
c/o CSC - Lawyers Incorp. Serv.  
2710 Gateway Oaks Dr. Suite  
Sacramento, CA 95833  
50N



9590 9402 6744 1060 3011 96

2. Article Number (Transfer from service label)

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A. Signature

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☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

OCT 01 2021

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| <input type="checkbox"/> Adult Signature Restricted Delivery     | <input type="checkbox"/> Registered Mail™                           |
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