

**SUMMONS
(CITACION JUDICIAL)**

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

THE VASQUEZ COMPANY, a California Corporation; and DOES
1-50, Inclusive


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

BILLY DANIEL JR., an individual(s), on behalf of himself and on behalf
of all persons similarly situated

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

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 23 2022

BY 
GLORIA MARIN, 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), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

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

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

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

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

San Bernardino Superior Court - Civil Division
247 West Third Street
San Bernardino, CA 92415

CASE NUMBER:
(Número del Caso) **CIV SB 2204403**

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: (619) 599-8291
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

Gloria Marin

DATE: **MAR 23 2022** Clerk, by _____, Deputy
(Fecha) (Secretario) (Adjunto)

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



NOTICE TO THE PERSON SERVED: You are served

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

VIA FAX

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 28 2022

BY 
GLORIA MARIN, DEPUTY

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17 Attorneys for Plaintiff BILLY DANIEL JR.

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

17 BILLY DANIEL JR., an individual(s), on
18 behalf of himself and on behalf of all persons
19 similarly situated,

19 Plaintiff,

20 v.

21 THE VASQUEZ COMPANY, a California
22 Corporation; and DOES 1-50, Inclusive,

23 Defendants.

Case No: **CIV SB 2204403**

CLASS ACTION COMPLAINT FOR:

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

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DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802.

DEMAND FOR A JURY TRIAL

Plaintiff BILLY DANIEL JR. (“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 THE VASQUEZ COMPANY (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of San Bernardino.

2. DEFENDANT owns, operates and manages restaurants in the State of California, including San Bernardino County, where PLAINTIFF worked.

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

4. The agents, servants, and/or employees of the Defendants and each of them acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other members of the

1 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
2 Defendants' agents, servants and/or employees.

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

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

14 7. PLAINTIFF was employed by DEFENDANT in California in December of 2021
15 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
16 basis, and entitled to the legally required meal and rest periods and payment of minimum and
17 overtime wages due for all time worked.

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

24 9. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
26 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
27 lawfully compensate these employees.
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1 effect during the pay periods and the corresponding amount of time worked at each hourly rate.
2 DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate
3 and full payment for all time worked as required by California law which allows DEFENDANTS
4 to illegally profit and gain an unfair advantage over competitors who comply with the law. To
5 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
6 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

7 **A. Meal Period Violations**

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

24 16. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
25 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
26 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
27 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
28 other CALIFORNIA CLASS Members were required from time to time to perform work as

1 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
2 meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
3 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
4 these employees were required by DEFENDANTS to work ten (10) hours of work from time to
5 time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS
6 Members does not qualify for limited and narrowly construed "on-duty" meal period exception.
7 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS
8 Members were, from time to time, required to remain on duty, on call, and/or on the premises
9 during what was supposed to be their off-duty meal periods. PLAINTIFF and other
10 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
11 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

12 **B. Rest Period Violations**

13 17. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
14 CALIFORNIA CLASS members were also required from time to time to work in excess of four
15 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
16 requirements and DEFENDANTS' inadequate staffing. Further, for the same reasons these
17 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
18 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
19 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
20 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
21 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
22 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty, on-
23 call and/or on-premises. PLAINTIFF and other CALIFORNIA CLASS Members were also not
24 provided with one-hour wages *in lieu* thereof. Further, from time to time, PLAINTIFF and other
25 CALIFORNIA CLASS Members were required to remain on duty, on call and/or on-premises
26 during what was supposed to be their off-duty rest periods. As a result of their rigorous work
27 schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA
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1 CLASS Members were from time to time denied their proper rest periods by DEFENDANTS and
2 DEFENDANTS' managers.

3 **C. Unreimbursed Business Expenses**

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

15 19. In the course of their employment, DEFENDANTS from time to time required
16 PLAINTIFF and other CALIFORNIA CLASS Members to use their personal cell phone to
17 correspond and coordinate tasks with their supervisor and/or other employees as a result of and
18 in furtherance of their job duties as employees for DEFENDANT. But for the use of their own
19 personal cell phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete
20 their essential job duties, including but not limited to sending and receiving work-related
21 communications from DEFENDANTS. However, DEFENDANTS unlawfully failed to
22 reimburse PLAINTIFF and other CALIFORNIA CLASS Members for their use of their personal
23 cell phones. As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF
24 and other CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were
25 not limited to, costs related to the use of their personal cellular phones, all on behalf of and for
26 the benefit of DEFENDANT.

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1 **D. Wage Statement Violations**

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

10 21. From time to time during the CLASS PERIOD, when PLAINTIFF and other
11 CALIFORNIA CLASS Members missed meal and rest breaks, or were not paid for all hours
12 worked, DEFENDANTS from time to time failed to provide PLAINTIFF and other
13 CALIFORNIA CLASS Members with complete and accurate wage statements that include,
14 among other things, the total hours worked, all applicable hourly rates in effect during the pay
15 period, and the corresponding amount of time worked at each hourly rate.

16 22. In addition to the violations described above, DEFENDANTS, from time to time,
17 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
18 that comply with Cal. Lab. Code § 226.

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

23 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

24 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
25 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
26 CLASS for all hours worked.

27 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required
28 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work pre-shift, post-

1 shift, and during a scheduled meal break while off the clock. This resulted in PLAINTIFF and
2 other members of the CALIFORNIA CLASS having to work while off-the-clock.

3 26. DEFENDANTS from time to time directed and directly benefited from the
4 uncompensated off-the-clock work performed by PLAINTIFF and the other members of the
5 CALIFORNIA CLASS.

6 27. DEFENDANTS controlled the work schedules, duties, protocols, applications,
7 assignments, and employment conditions of PLAINTIFF and the other members of the
8 CALIFORNIA CLASS.

9 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
10 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS from time to
11 time failed to document, track, or pay PLAINTIFF and the other members of the CALIFORNIA
12 CLASS all wages earned and owed for all the work they performed, including pre-shift, post-
13 shift, and during meal period off-the-clock work.

14 29. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
15 exempt employees, subject to the requirements of the California Labor Code.

16 30. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
17 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
18 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
19 CALIFORNIA CLASS from time to time worked over 40 hours in a workweek, and more than
20 eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime
21 pay.

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

24 32. As a result, from time to time, PLAINTIFF and the other members of the
25 CALIFORNIA CLASS forfeited wages due them for all hours worked at DEFENDANTS'
26 direction, control and benefit for the time spent performing work before and after shifts, receiving
27 and responding to work-related communications on personal cell phones outside of their
28 scheduled shifts and working while clocked out for meal periods. DEFENDANTS' uniform

1 policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages
2 for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
3 records.

4 **F. Regular Rate Violation- Overtime, Double Time, Meal and Rest Period Premiums, and**
5 **Sick Pay**

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

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

19 35. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
20 members' compensation was DEFENDANTS' non-discretionary incentive program that paid
21 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
22 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
23 basis with bonus compensation when the employees met the various performance goals set by
24 DEFENDANTS.

25 36. However, from-time-to-time, when calculating the regular rate of pay, in those pay
26 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
27 time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-
28 discretionary compensation, DEFENDANTS failed to accurately include the non-discretionary

1 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked
2 rather than just all non-overtime hours worked. As a matter of law, the compensation received
3 by PLAINTIFF and other CALIFORNIA CLASS members must be included in the "regular rate
4 of pay." The failure to do so has resulted in a systematic underpayment of overtime and double
5 time compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other
6 CALIFORNIA CLASS members by DEFENDANTS. Specifically, California Labor Code
7 Section 246 mandates that paid sick time for non-employees shall be calculated in the same
8 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid
9 sick time, whether or not the employee actually works overtime in that workweek.
10 DEFENDANTS' conduct, as articulated herein, by failing to include the incentive compensation
11 as part of the "regular rate of pay" for purposes of overtime, double time, paid meal and rest period
12 premium payments, and/or paid sick pay compensation was in violation of Cal. Lab. Code § 246
13 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or
14 204.

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

26 **G. Unlawful Deductions**

27 38. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
28 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do

1 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
2 DEFENDANTS violated Labor Code § 221.

3 **H. Unlawful Rounding Violations**

4 39. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
5 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
6 CALIFORNIA CLASS Members for the actual time these employees worked each day,
7 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
8 policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
9 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
10 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
11 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
12 these employees for all their time worked, including the applicable overtime compensation for
13 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
14 time to time, forfeited compensation for their time worked by working without their time being
15 accurately recorded and without compensation at the applicable overtime rates.

16 40. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
17 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
18 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
19 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
20 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
21 off-duty meal break. Additionally, DEFENDANTS' unlawful rounding policy and practice
22 caused PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by
23 DEFENDANTS for more than ten (10) hours during a shift without receiving a second off-duty
24 meal break.

25 41. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
26 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
27 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
28 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to

1 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
2 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
3 with a rest break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for
4 the rest break. DEFENDANTS' policy caused PLAINTIFF to remain on-call, on-duty and/or on-
5 premises during what was supposed to be his off-duty meal periods. PLAINTIFF therefore
6 forfeited meal and rest breaks without additional compensation and in accordance with
7 DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided
8 PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code § 226. Further,
9 DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to
10 the use of his personal cell phone, on behalf of and in furtherance of his employment with
11 DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum,
12 overtime and double time compensation still owed to him or any penalty wages owed to him
13 under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not
14 exceed the sum or value of \$75,000.

15 **I. CLASS ACTION ALLEGATIONS**

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

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

1 44. The members of the class are so numerous that joinder of all class members is
2 impractical.

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

- 10 a. Whether DEFENDANTS maintained legally compliant meal period policies and
11 practices;
- 12 b. Whether DEFENDANTS maintained legally compliant rest period policies and
13 practices;
- 14 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
15 CLASS Members accurate premium payments for missed meal and rest periods;
- 16 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
17 CLASS Members accurate overtime and double time wages;
- 18 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
19 CLASS Members at least minimum wage for all hours worked;
- 20 f. Whether DEFENDANTS failed to compensate PLAINTIFF and the
21 CALIFORNIA CLASS Members for required business expenses;
- 22 g. Whether DEFENDANTS unlawfully deducted earned wages from PLAINTIFF
23 and the CALIFORNIA CLASS Members' pay;
- 24 h. Whether DEFENDANTS issued legally compliant wage statements;
- 25 i. Whether DEFENDANTS committed an act of unfair competition by
26 systematically failing to record and pay PLAINTIFF and the other members of the
27 CALIFORNIA CLASS for all time worked;
- 28

1 j. Whether DEFENDANTS committed an act of unfair competition by
2 systematically failing to record all meal and rest breaks missed by PLAINTIFF
3 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed
4 the benefit of this work, required employees to perform this work and permits or
5 suffers to permit this work;

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

9 46. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
10 a result of DEFENDANTS' conduct and actions alleged herein.

11 47. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
12 the same interests as the other members of the class.

13 48. PLAINTIFF will fairly and adequately represent and protect the interests of the
14 CALIFORNIA CLASS Members.

15 49. PLAINTIFF retained able class counsel with extensive experience in class action
16 litigation.

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

19 51. There is a strong community of interest among PLAINTIFF and the members of
20 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
21 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
22 sustained.

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

26 53. A class action is superior to other available methods for the fair and efficient
27 adjudication of this controversy because joinder of all class members is impractical. Moreover,
28 since the damages suffered by individual members of the class may be relatively small, the

1 expense and burden of individual litigation makes it practically impossible for the members of the
2 class individually to redress the wrongs done to them. Without class certification and
3 determination of declaratory, injunctive, statutory and other legal questions within the class
4 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
5 create the risk of:

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

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

16 **FIRST CAUSE OF ACTION**

17 **Unlawful Business Practices**

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

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

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

23 56. DEFENDANT is a "person" as that term is defined under Cal. Bus. And Prof.
24 Code § 17021.

25 57. California Business & Professions Code §§ 17200, et seq. (the "UCL") defines
26 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
27 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
28 as follows:

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

6 58. By the conduct alleged herein, DEFENDANT has engaged and continues to
7 engage in a business practice which violates California law, including but not limited to, the
8 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
9 including Sections 201, 202, 203, 204, 221, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
10 1198, 2802, for which this Court should issue declaratory and other equitable relief pursuant to
11 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
12 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

25 61. 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 62. 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 members
4 as required by Cal. Lab. Code §§ 226.7 and 512.

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

10 64. 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 was
12 not timely provided as required by law.

13 65. 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 66. 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 Labor
21 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
22 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
23 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

24 67. 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 unfair
28 business practices, including earned but unpaid wages for all time worked.

1 68. 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 69. 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 of
7 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
8 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
9 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
10 and economic harm unless DEFENDANT is restrained from continuing to engage in these
11 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 70. 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 71. 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 calculate
22 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

25 73. 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 than
27 the minimum so fixed is unlawful.

28

1 74. 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 75. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
4 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
5 worked. As set forth herein, DEFENDANT'S uniform policy and practice was to unlawfully and
6 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
7 CALIFORNIA CLASS.

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

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

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

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

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

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

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

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

27
28 ///

1 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
2 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 91. 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 California
9 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
10 regulations.

11 92. 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 93. 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 the
17 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
18 agreement that would preclude the causes of action contained herein this Complaint. Rather,
19 PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA CLASS based on
20 DEFENDANT's violations of non- negotiable, non-waivable rights provided by the State of
21 California.

22 94. 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 95. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
26 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
27 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
28 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,

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

3 96. 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 97. 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, practice
12 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
13 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

22 99. 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 CLASS
27 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
28 Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time

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

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

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

9
10 100. 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.

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

27 102. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
28 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members

1 who were not provided a meal period, in accordance with the applicable Wage Order, one
2 additional hour of compensation at each employee's regular rate of pay for each workday that a
3 meal period was not provided.

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

7 **FIFTH CAUSE OF ACTION**

8 **Failure To Provide Required Rest Periods**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

14 105. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
15 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
16 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
17 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
18 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
19 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
20 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
21 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
22 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
23 DEFENDANT and DEFENDANT's managers. As a result, DEFENDANT's failure to provide
24 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
25 periods is evidenced by DEFENDANT's business records.

26 106. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
27 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
28 who were not provided a rest period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday that rest
2 period was not provided.

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code §§ 226)**

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

10 108. 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.

13 109. Cal. Labor Code § 226 provides that an employer must furnish employees with an
14 "accurate itemized" statement in writing showing:

- 15 a. Gross wages earned,
- 16 b. (2) total hours worked by the employee, except for any employee whose
17 compensation is solely based on a salary and who is exempt from payment
18 of overtime under subdivision (a) of Section 515 or any applicable order of
19 the Industrial Welfare Commission,
- 20 c. the number of piece-rate units earned and any applicable piece rate if the employee
21 is paid on a piece-rate basis,
- 22 d. all deductions, provided that all deductions made on written orders of the employee
23 may be aggregated and shown as one item,
- 24 e. net wages earned,
- 25 f. the inclusive dates of the period for which the employee is paid,
- 26 g. the name of the employee and his or her social security number, except that by
27 January 1, 2008, only the last four digits of his or her social security number of an
28

- 1 employee identification number other than social security number may be shown
2 on the itemized statement,
- 3 h. the name and address of the legal entity that is the employer, and
 - 4 i. all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee.

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

13 111. In addition to the foregoing, DEFENDANTS failed to provide itemized wage
14 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
15 requirements of California Labor Code Section 226.

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

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

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

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

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

9 As used in this article:

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

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

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

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

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

118. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with
Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or 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.

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

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

13 **PRAYER FOR RELIEF**

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

16 1. On behalf of the CALIFORNIA CLASS:

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

27 2. On behalf of the CALIFORNIA CLASS:

- 28 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth

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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 minimum wage and overtime compensation, business expense reimbursements, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
 - c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
 - d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
 - e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
3. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and
 - c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: February 25, 2022

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: February 25, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

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