

SUMMONS (CITACION JUDICIAL)

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

HCL AMERICA SOLUTIONS INC., a California corporation; HCL AMERICA INC., a California corporation; and DOES 1-50, Inclusive,

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

SAHIL MAHAJAN, 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
05/20/2022

Chad Finke, Executive Officer / Clerk of the Court

By: C. Clark 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):

Alameda County Superior Court
1225 Fallon St
Oakland, CA 94612

CASE NUMBER: **22CV011480**
(Número del Caso):

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203

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

DATE: **05/20/2022** Chad Finke, Executive Officer / Clerk of the Court Clerk, by C. Clark , 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

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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21 Attorneys for Plaintiff SAHIL MAHAJAN

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

24 SAHIL MAHAJAN, an individual, on behalf of
25 himself and on behalf of all persons similarly
26 situated,

27 Plaintiff,

28 v.

HCL AMERICA SOLUTIONS INC., a
California corporation; HCL AMERICA INC.,
a California corporation; and DOES 1-50,
Inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
05/20/2022 at 02:42:54 PM
By: Cheryl Clark, Deputy Clerk

Case No: **22CV011480**

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

DEMAND FOR A JURY TRIAL

Plaintiff Sahil Mahajan (“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 HCL AMERICA SOLUTIONS, INC. (“Defendant HCL America Solutions”) 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.

2. Defendant HCL AMERICA INC. (“Defendant HCL America”) 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.

3. Defendant HCL America Solutions and Defendant America were the joint employers of PLAINTIFF as evidenced by the wage statements furnished to PLAINTIFF while he performed work and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

4. DEFENDANTS own, operate, and/or manage a global technology company that provides information technology products and consulting services throughout the state of California, including the county of Alameda, where PLAINTIFF worked.

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

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

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

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

20 9. PLAINTIFF was employed by DEFENDANTS in California from August of 2019
21 to April of 2020, and at all times was classified by DEFENDANT as a non-exempt employee,
22 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
23 minimum and overtime wages due for all time worked.

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

THE CONDUCT

1
2 16. In violation of the applicable sections of the California Labor Code and the
3 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
4 matter of company policy, practice and procedure, intentionally, knowingly and systematically
5 failed to provide legally compliant meal and rest periods, failed to accurately compensate
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
7 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
8 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
9 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
10 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal and rest
11 premiums at the regular rate, and failed to reimburse PLAINTIFF and other CALIFORNIA
12 CLASS Members for business expenses, among other things, all applicable hourly rates in effect
13 during the pay periods and the corresponding amount of time worked at each hourly rate.
14 DEFENDANT's uniform policies and practices are intended to purposefully avoid the accurate
15 and full payment for all time worked as required by California law which allows DEFENDANT
16 to illegally profit and gain an unfair advantage over competitors who comply with the law. To
17 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
18 DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

19 **A. Meal Period Violations**

20 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
21 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
22 meaning the time during which an employee is subject to the control of an employer, including
23 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
24 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
25 without paying them for all the time they were under DEFENDANT's control. Specifically, as a
26 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
27 DEFENDANT required PLAINTIFF to work during what was supposed to be PLAINTIFF's off-
28 duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial

1 lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
2 minimum wage and overtime wages by regularly working without their time being accurately
3 recorded and without compensation at the applicable minimum wage and overtime rates.
4 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
5 CLASS Members for all time worked is evidenced by DEFENDANT's business records.

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

24 **B. Rest Period Violations**

25 19. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
26 CALIFORNIA CLASS members were also required from time to time to work in excess of four
27 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
28 requirements and DEFENDANT's inadequate staffing. Further, for the same reasons these

1 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
2 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
3 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
4 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
5 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
6 other CALIFORNIA CLASS Members were, from time to time, required to remain on premises,
7 on duty and/or on call. Further, PLAINTIFF and the CALIFORNIA CLASS Members were from
8 time to time required to maintain cordless communication devices on them during rest periods in
9 order to send and receive work-related communications. PLAINTIFF and other CALIFORNIA
10 CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their
11 rigorous work schedules and DEFENDANT's inadequate staffing, PLAINTIFF and other
12 CALIFORNIA CLASS Members were from time to time denied their proper rest periods by
13 DEFENDANT and DEFENDANT's managers.

14 **C. Unreimbursed Business Expenses**

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

26 21. In the course of their employment, DEFENDANT required PLAINTIFF and other
27 CALIFORNIA CLASS Members to use their personal vehicles, cellular phones, laptops, and
28 home internet, as well as pay out of pocket costs for employment-related training as a result of

1 and in furtherance of their job duties as employees for DEFENDANT. But for the use of their
2 own personal vehicles, cellular phones, laptops, home internet and payment of employment-
3 related training costs, PLAINTIFF and the CALIFORNIA CLASS Members could not complete
4 their essential job duties. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF
5 and other CALIFORNIA CLASS Members for their use of their personal vehicles, cellular
6 phones, laptops, home internet, and payment of employment-related training costs. As a result, in
7 the course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA
8 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related
9 to the use of their personal vehicles, cellular phones, laptops, home internet, and payment of
10 employment-related training costs, all on behalf of and for the benefit of DEFENDANT.

11 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

12 22. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
13 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
14 CLASS for all hours worked.

15 23. During the CLASS PERIOD, from time-to-time DEFENDANT required
16 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
17 work, including but not limited to, communicating with co-workers and managers about work-
18 related tasks during non-working hours and continuing to work from home after his shift ended.
19 This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work
20 while off-the-clock.

21 24. DEFENDANT directed and directly benefited from the uncompensated off-the-
22 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

26 26. DEFENDANT was able to track the amount of time PLAINTIFF and the other
27 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
28

1 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
2 wages earned and owed for all the work they performed.

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

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

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

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

17 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
18 **Redeemed Sick Pay**

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

28

1 32. State law provides that employees must be paid overtime at one-and-one-half times
2 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS members were
3 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
4 employee’s performance.

5 33. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
6 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
7 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
8 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
9 basis with bonus compensation when the employees met the various performance goals set by
10 DEFENDANTS.

11 34. However, from-time-to-time, when calculating the regular rate of pay, in those pay
12 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
13 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
14 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
15 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked
16 rather than just all non-overtime hours worked. Management and supervisors described the
17 incentive/bonus program to potential and new employees as part of the compensation package.
18 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
19 CLASS members must be included in the “regular rate of pay.” The failure to do so has resulted
20 in a systematic underpayment of overtime and double time compensation, meal and rest period
21 premiums, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS members by
22 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
23 for non-employees shall be calculated in the same manner as the regular rate of pay for the
24 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
25 actually works overtime in that workweek. DEFENDANTS’ conduct, as articulated herein, by
26 failing to include the incentive compensation as part of the “regular rate of pay” for purposes of
27 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
28 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

12 **F. Unlawful Deductions**

13 36. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
14 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
15 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
16 DEFENDANTS violated Labor Code § 221.

17 **G. Violations for Untimely Payment of Wages**

18 37. Pursuant to California Labor Code section 204, PLAINTIFF and the
19 CALIFORNIA CLASS members were entitled to timely payment of wages during their
20 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
21 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
22 meal period premium wages, and rest period premium wages within permissible time period.

23 **H. Unlawful Rounding Violations**

24 38. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place
25 an immutable timekeeping system to accurately record and pay PLAINTIFF and other
26 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
27 overtime hours. Specifically, DEFENDANT had in place an unlawful rounding policy and
28 practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being

1 undercompensated for all their time worked. As a result, DEFENDANT was able to and did in
2 fact unlawfully, and unilaterally round the time recorded in DEFENDANT’S timekeeping system
3 for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying these
4 employees for all their time worked, including the applicable overtime compensation for overtime
5 worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from time to time,
6 forfeited compensation for their time worked by working without their time being accurately
7 recorded and without compensation at the applicable overtime rates.

8 39. Further, the mutability of DEFENDANT’S timekeeping system and unlawful
9 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members’ time
10 being inaccurately recorded. As a result, from time to time, DEFENDANT’S unlawful rounding
11 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
12 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
13 duty meal break. Additionally, DEFENDANT’S unlawful rounding policy and practice caused
14 PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT
15 for more than ten (10) hours during a shift without receiving a second off-duty meal break.

16 **I. Failure to Provide Personnel Files**

17 40. On March 31, 2022, PLAINTIFF caused a written request via certified mail to be
18 delivered to DEFENDANTS for PLAINTIFF’S personnel and employment records, including
19 but not limited to: (1) payroll records; (2) employment contracts; (3) itemized pay stubs; and (4)
20 PLAINTIFF’S complete employment file.

21 41. DEFENDANTS failed to provide and/or make available to PLAINTIFF his
22 personnel records, payroll records, employment contract, and entire employment file within thirty
23 (30) days of his request stated above. In fact, as of the date of filing of this complaint,
24 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
25 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide
26 PLAINTIFF with his employment file. Section 1198.5 states that employees (and former
27 employees) have the right to inspect personnel records maintained by the employer “related to
28 the employee’s performance or to any grievance concerning the employee.” Employers must
allow inspection or copying within thirty (30) days of the request. PLAINTIFF is now entitled to

1 and requests injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, a statutory
2 penalty, and an award of attorneys' fees and costs for bringing this action

3 42. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
4 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
5 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
6 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
7 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
8 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
9 with a rest break, they required PLAINTIFF to remain on premises, on-duty and on-call for the
10 rest break. DEFENDANTS policy caused PLAINTIFF to remain on premises, on-call and on-
11 duty during what was supposed to be his off-duty meal periods. Further, PLAINTIFF was required
12 to maintain cordless communication devices on them during meal and rest periods in order to
13 send and receive work-related communications. PLAINTIFF therefore forfeited meal and rest
14 breaks without additional compensation and in accordance with DEFENDANT strict corporate
15 policy and practice. Further, DEFENDANT also failed to reimburse PLAINTIFF for required
16 business expenses related to the use of his personal vehicles, cellular phones, laptops, home
17 internet, and payment for employment-related training costs, on behalf of and in furtherance of
18 his employment with DEFENDANT. Further, failed to provide and/or make available to
19 PLAINTIFF his personnel records, payroll records, employment contracts, and entire
20 employment file within (30) days of all his request on March 31, 2022. To date, DEFENDANT
21 have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed
22 to him, or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy
23 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

23 **J. CLASS ACTION ALLEGATIONS**

24 58. PLAINTIFF brings this Class Action on behalf of himself and a California class,
25 defined as all persons who are or previously were employed by Defendant HCL America
26 Solutions and/or HCL America in California and classified as non-exempt employees (the
27 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the
28 filing of this Complaint and ending on the date as determined by the Court (the "CLASS
PERIOD").

1 59. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
2 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
3 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
4 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
5 for off-the-clock work, failure to maintain required records, and interest, statutory and civil
6 penalties, attorney's fees, costs, and expenses.

7 60. The members of the class are so numerous that joinder of all class members is
8 impractical.

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

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

- 1 g. Whether DEFENDANT committed an act of unfair competition by systematically
2 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
3 CLASS for all time worked;
- 4 h. Whether DEFENDANT committed an act of unfair competition by systematically
5 failing to record all meal and rest breaks missed by PLAINTIFF and other
6 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
7 of this work, required employees to perform this work and permits or suffers to
8 permit this work;
- 9 i. Whether DEFENDANT committed an act of unfair competition in violation of the
10 UCL, by failing to provide the PLAINTIFF and the other members of the
11 CALIFORNIA CLASS with the legally required meal and rest periods.
- 12 62. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
13 a result of DEFENDANT's conduct and actions alleged herein.
- 14 63. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
15 the same interests as the other members of the class.
- 16 64. PLAINTIFF will fairly and adequately represent and protect the interests of the
17 CALIFORNIA CLASS Members.
- 18 65. PLAINTIFF retained able class counsel with extensive experience in class action
19 litigation.
- 20 66. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
21 interests of the other CALIFORNIA CLASS Members.
- 22 67. There is a strong community of interest among PLAINTIFF and the members of
23 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
24 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
25 sustained.
- 26 68. The questions of law and fact common to the CALIFORNIA CLASS Members
27 predominate over any questions affecting only individual members, including legal and factual
28 issues relating to liability and damages.

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

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

13 73. By the conduct alleged herein, DEFENDANT has engaged and continues to
14 engage in a business practice which violates California law, including but not limited to, the
15 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
16 including Sections 201, 202, 203, 204, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
17 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
18 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
19 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

1 76. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
2 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
3 other members of the CALIFORNIA CLASS to be underpaid during their employment with
4 DEFENDANT.

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

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

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

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

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

28

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

3 88. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
5 the minimum so fixed is unlawful.

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

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

13 91. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
15 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
16 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

26 94. During the CLASS PERIOD, PLAINTIFF and the other members of the
27 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
28 failure to pay all earned wages.

1 95. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
2 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
3 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
4 suffered and will continue to suffer an economic injury in amounts which are presently unknown
5 to them, and which will be ascertained according to proof at trial.

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

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

21 98. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
22 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
23 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
24 California Labor Code and/or other applicable statutes. To the extent minimum wage
25 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
26 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
27 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
28 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS

1 Members. DEFENDANT's conduct as alleged herein was willful, intentional, and not in good
2 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
3 recover statutory costs.

4 **THIRD CAUSE OF ACTION**

5 **Failure To Pay Overtime Compensation**

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

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

8 99. 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.

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

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

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

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

26 104. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
27 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
28 they worked, including overtime work.

1 105. DEFENDANT’s uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
3 implementing a uniform policy and practice that failed to accurately record overtime worked by
4 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
5 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
6 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
7 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

14 107. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,
15 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
16 compensation for overtime worked.

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

25 109. During the CLASS PERIOD, PLAINTIFF and the other members of the
26 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
27 constituting a failure to pay all earned wages.

28

1 110. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
2 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
3 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, and 1198, even
4 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
5 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as
6 evidenced by DEFENDANT's business records and witnessed by employees.

7 111. 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 all
9 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
10 CLASS have suffered and will continue to suffer an economic injury in amounts which are
11 presently unknown to them, and which will be ascertained according to proof at trial.

12 112. DEFENDANT knew or should have known that PLAINTIFF and the other
13 members of the CALIFORNIA CLASS were under compensated for all overtime 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 company policy, practice
16 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

26 114. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
27 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
28 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a

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

9 **FOURTH CAUSE OF ACTION**

10 **Failure To Provide Required Meal Periods**

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

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

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

16 116. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
17 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
18 required by the applicable Wage Order and Labor Code. The nature of the work performed by
19 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
20 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
21 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
22 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
23 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
24 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
25 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
26 Members with a second off-duty meal period in some workdays in which these employees were
27 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
28

1 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
2 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

11 **FIFTH CAUSE OF ACTION**

12 **Failure To Provide Required Rest Periods**

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

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

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

18 120. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
19 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
20 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
21 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
22 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
23 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
24 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
25 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
26 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
27 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate
28 PLAINTIFF and CALIFORNIA CLASS Members for their rest periods as required by the

1 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
2 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
3 periods is evidenced by DEFENDANT's business records.

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

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

12 **SIXTH CAUSE OF ACTION**

13 **Failure To Pay Wages When Due**

14 **(Cal. Lab. Code §§ 203)**

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

16 123. 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.

19 124. Cal. Lab. Code § 200 provides that:

20 As used in this article:

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

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

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

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

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

12 128. Cal. Lab. Code § 203 provides:

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

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

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

27 **SEVENTH CAUSE OF ACTION**

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

(Cal. Lab. Code §§ 2802)

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

131. 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.

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

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

5 133. From time-to-time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
6 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
7 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
8 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the members of the
9 CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
10 using their personal vehicles, cellular phones, laptops, home internet, and payment of
11 employment-related training costs all on behalf of and for the benefit of DEFENDANT.
12 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
13 DEFENDANT to use their personal vehicles, cellular phones, laptops, home internet, and pay for
14 employment-related training costs to execute their essential job duties on behalf of
15 DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse
16 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
17 their personal vehicles, cellular phones, laptops, home internet, and payment of employment-
18 related training costs for DEFENDANT within the course and scope of their employment for
19 DEFENDANT. These expenses were necessary to complete their principal job duties.
20 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of their expectation.
21 Although these expenses were necessary expenses incurred by PLAINTIFF and the members of
22 the CALIFORNIA CLASS, DEFENDANT failed to indemnify and reimburse PLAINTIFF and
23 the members of the CALIFORNIA CLASS for these expenses as an employer is required to do
24 under the laws and regulations of California.

25 134. PLAINTIFF therefore demands reimbursement on behalf of the members of the
26 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
27 on behalf of DEFENDANT, or his/her obedience to the directions of DEFENDANT, with interest
28 at the statutory rate and costs under Cal. Lab. Code § 2802.

///

1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

- 5 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
6 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 7 b. An order temporarily, preliminarily and permanently enjoining and restraining
8 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 9 c. An order requiring DEFENDANT to pay all overtime wages and all sums
10 unlawfully withheld from compensation due to PLAINTIFF and the other members
11 of the CALIFORNIA CLASS; and
- 12 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
13 for restitution of the sums incidental to DEFENDANT's violations due to
14 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

15 2. On behalf of the CALIFORNIA CLASS:

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
17 of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal.
18 Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for overtime compensation and separately owed rest periods, due to
21 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
22 applicable CLASS PERIOD plus interest thereon at the statutory rate;
- 23 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
24 the applicable IWC Wage Order;
- 25 d. The wages of all terminated employees from the CALIFORNIA CLASS as a
26 penalty from the due date thereof at the same rate until paid or until an action
27 therefore is commenced, in accordance with Cal. Lab. Code § 203.

28 3. On all claims:

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- 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: May 20, 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: May 20, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF