

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**

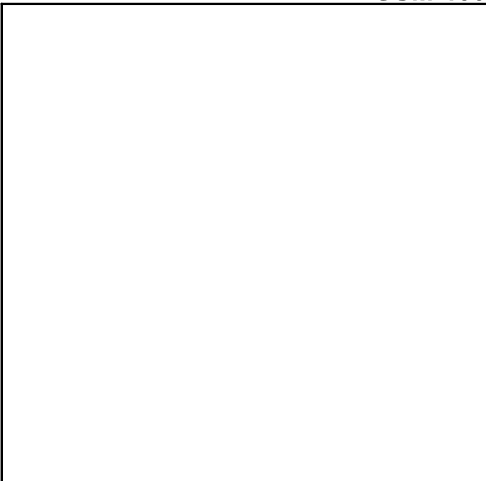
**(AVISO AL DEMANDADO):**

DCH TORRANCE IMPORTS INC., a California corporation; and DOES 1-50, Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

AARON CASTRO, an individual, on behalf of himself, and on behalf of all persons similarly situated,



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

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

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

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

The name and address of the court is:

*(El nombre y dirección de la corte es):*

Los Angeles Superior Court - Stanley Mosk Courthouse  
111 North Hill Street  
Los Angeles, CA 90012

CASE NUMBER: **23STCV02400**  
*(Número del Caso):*

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

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

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (858) 599-8291

JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

David W. Slayton, Executive Officer/Clerk of Court

DATE: 02/03/2023

*(Fecha)*

Clerk, by G. Carini

*(Secretario)*

, Deputy  
*(Adjunto)*

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

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

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

- 1.  as an individual defendant.
- 2.  as the person sued under the fictitious name of *(specify)*:

3.  on behalf of *(specify)*:

- under:  CCP 416.10 (corporation)  CCP 416.60 (minor)
- CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)
- other *(specify)*:

4.  by personal delivery on *(date)*:



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Attorneys for PLAINTIFF

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF LOS ANGELES**

AARON CASTRO, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiffs,

v.

DCH TORRANCE IMPORTS INC., a California corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: **23STCV02400**

**CLASS ACTION COMPLAINT FOR:**

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

- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 9) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.

**DEMAND FOR A JURY TRIAL**

PLAINTIFF AARON CASTRO (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees, allege on information and belief, except for her own acts and knowledge which are based on personal knowledge, the following:

**PRELIMINARY ALLEGATIONS**

1. Defendant DCH TORRANCE IMPORTS INC. (“DEFENDANT” and/or “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANT owns, operates, and/or manages automotive dealerships throughout the state of California, including in the county of Los Angeles, where PLAINTIFF worked.

3. PLAINTIFF has been employed by DEFENDANT in California since December of 2012 as a non-exempt employee, paid in part an hourly basis and non-discretionary bonuses, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all persons who are or previously were employed by DEFENDANT in California and classified as non-exempt, exempt, piece-rate based and/or commission-based employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”).

1 The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is  
2 under five million dollars (\$5,000,000.00).

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

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

23 7. The agents, servants and/or employees of the Defendants and each of them acting  
24 on behalf of the Defendants acted within the course and scope of his, her or its authority as the  
25 agent, servant and/or employee of the Defendants, and personally participated in the conduct  
26 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.  
27 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all  
28 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 8. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of the  
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 9. 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 10. DEFENDANT'S uniform policies and practices alleged herein were unlawful,  
15 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain  
16 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

17 11. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction  
18 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and  
19 other members of the CALIFORNIA CLASS who has been economically injured by  
20 DEFENDANT'S past and current unlawful conduct, and all other appropriate legal and equitable  
21 relief.

## 22 **JURISDICTION AND VENUE**

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

27 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
28 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs

1 the CALIFORNIA CLASS across California, including in this County, and committed the  
2 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

3 **THE CONDUCT**

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

23 **A. Meal Period Violations**

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

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

10 16. From time to time during the CLASS PERIOD, as a result of their rigorous work  
11 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other  
12 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty  
13 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other  
14 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for  
15 more than five (5) hours during some shifts without receiving a meal break. Further,  
16 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second  
17 off-duty meal period for some workdays in which these employees are required by DEFENDANT  
18 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other  
19 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed "on-  
20 duty" meal period exception. When they were provided with meal periods, PLAINTIFF and other  
21 CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call.  
22 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with  
23 legally required meal breaks is evidenced by DEFENDANT's business records. PLAINTIFF and  
24 other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional  
25 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

26 **B. Rest Period Violations**

27 17. From time to time during the CLASS PERIOD, PLAINTIFF and other  
28 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without

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

13 **C. Unreimbursed Business Expenses**

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

25 19. In the course of their employment, DEFENDANT required PLAINTIFF and other  
26 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell  
27 phones and vehicles as a result of and in furtherance of their job duties. Specifically, PLAINTIFF  
28 and other CALIFORNIA CLASS Members were required to use their own cell phones in order



1 to communicate with customers, in addition to their own personal vehicles to complete work-  
2 related tasks. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other  
3 CALIFORNIA CLASS Members for their use of their own personal cell phones and personal  
4 vehicles. As a result, in the course of their employment with DEFENDANT, the PLAINTIFF and  
5 other CALIFORNIA CLASS Members incurred unreimbursed business expenses that included,  
6 but were not limited to, costs related to their personal cell phones and personal vehicles, all on  
7 behalf of and for the benefit of DEFENDANT.

8 **D. Wage Statement Violations**

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

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

25 22. In addition to the foregoing, DEFENDANT, from time to time, failed to provide  
26 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with  
27 Cal. Lab. Code § 226.  
28

1           23. As a result, DEFENDANT issued PLAINTIFF and other members of the  
2 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,  
3 DEFENDANT’s violations are knowing and intentional, were not isolated due to an unintentional  
4 payroll error due to clerical or inadvertent mistake.

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

6           24. During the CLASS PERIOD, from time-to-time DEFENDANT failed and  
7 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS  
8 for all hours worked.

9           25. During the CLASS PERIOD, from time-to-time DEFENDANT required  
10 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift  
11 working. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have  
12 to work while off-the-clock.

13           26. During the CASS PERIOD, from time-to-time DEFENDANT required  
14 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work on the weekends  
15 without allowing PLAINTIFF and other members of the CALIFORNIA CLASS to clock in.

16           27. DEFENDANT directed and directly benefited from the undercompensated off-the-  
17 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

18           28. DEFENDANT controlled the work schedules, duties, and protocols, applications,  
19 assignments, and employment conditions of PLAINTIFF and the other members of the  
20 CALIFORNIA CLASS.

21           29. DEFENDANT was able to track the amount of time PLAINTIFF and the other  
22 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to  
23 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all  
24 wages earned and owed for all the work they performed.

25           30. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-  
26 exempt employees, subject to the requirements of the California Labor Code.

27           31. DEFENDANT’s policies and practices deprived PLAINTIFF and the other  
28 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed

1 for the off-the-clock work activities. Because PLAINTIFF and the other members of the  
2 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than  
3 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime  
4 pay.

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

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

13 **F. Commission and Piece-Rate Based Violations**

14 34. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and  
15 the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those  
16 instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission  
17 and/or piece-rate basis, PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately  
18 compensated for all non-productive time at an hourly rate that is no less than the applicable  
19 minimum wage. Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA  
20 CLASS were paid in part on a commission and/or piece-rate basis, DEFENDANT failed to  
21 separately compensate PLAINTIFF and the CALIFORNIA CLASS for all non-productive time,  
22 including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable  
23 minimum wage. As a result, PLAINTIFF and the CALIFORNIA CLASS forfeited minimum  
24 wages and overtime wages by DEFENDANT'S failure to separately compensate their non-  
25 productive time at an hourly rate that is no less than the applicable minimum wage.

26  
27 ///  
28

1 **G. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**  
2 **and Redeemed Sick Pay**

3 35. From time to time during the CLASS PERIOD, DEFENDANT failed and  
4 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS  
5 Members for their overtime and double time hours worked, meal and rest period premiums, and  
6 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members  
7 forfeited wages due to them for working overtime without compensation at the correct overtime  
8 and double time rates, meal and rest period premiums, and redeemed sick pay rates.  
9 DEFENDANT’s uniform policy and practice not to pay the CALIFORNIA CLASS Members at  
10 the correct rate for all overtime and double time worked, meal and rest period premiums, and  
11 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT’s business  
12 records.

13 36. State law provides that employees must be paid overtime at one-and-one-half times  
14 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were  
15 compensated at an hourly rate plus incentive pay that was tied to specific elements of an  
16 employee’s performance.

17 37. The second component of PLAINTIFF’s and other CALIFORNIA CLASS  
18 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid  
19 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for  
20 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly  
21 basis with bonus compensation when the employees met the various performance goals set by  
22 DEFENDANTS.

23 38. However, from-time-to-time, when calculating the regular rate of pay, in those pay  
24 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double  
25 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-  
26 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus  
27 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked  
28 rather than just all non-overtime hours worked. Management and supervisors described the

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

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

#### 24       **H. Unlawful Rounding Practices**

25           40. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in  
26 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other  
27 CALIFORNIA CLASS Members for the actual time these employees worked each day, including  
28 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and

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

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

15 **I. Timekeeping Manipulation**

16 42. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an  
17 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of  
18 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the  
19 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal  
20 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally  
21 alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and other  
22 members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours  
23 worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed  
24 rest break.

25 43. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from  
26 time-to-time, forfeited time worked by working without their time being accurately recorded and  
27 without compensation at the applicable pay rates.  
28

1           44. The mutability of the timekeeping system also allowed DEFENDANTS to alter  
2 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'  
3 timekeeping system so as to create the appearance that PLAINTIFF and other members of the  
4 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees  
5 were not at all times provided an off-duty meal break. This practice is a direct result of  
6 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)  
7 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

8           45. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
9 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit  
10 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and  
11 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all  
12 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business  
13 records.

14           **J. Violations for Untimely Payment of Wages**

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

20           **K. Unlawful Deductions**

21           47. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF  
22 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do  
23 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,  
24 DEFENDANTS violated Labor Code § 221.

25           48. 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 DEFENDANT for more than five (5)  
28 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT 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 DEFENDANT provided PLAINTIFF  
3 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.  
4 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was  
5 supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks  
6 without additional compensation and in accordance with DEFENDANT’S strict corporate policy  
7 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to  
8 comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse PLAINTIFF for  
9 the use of his personal vehicle in violation of Cal. Lab. Code § 2802. To date, DEFENDANT has  
10 not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to  
11 him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy  
12 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

### 13 **CLASS ACTION ALLEGATIONS**

14 49. PLAINTIFF bring this Class Action on behalf of himself, and a California class  
15 defined as all persons who are or previously were employed by DEFENDANT in California and  
16 classified as non-exempt, exempt, piece-rate based and/or commission-based employees (the  
17 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing  
18 of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”).

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

25 51. The members of the class are so numerous that joinder of all class members is  
26 impractical.

27 52. Common questions of law and fact regarding DEFENDANT’S conduct, including  
28 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately



1 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the  
2 regular rate of compensation for missed meal and rest period premiums, failing to provide legally  
3 compliant meal and rest periods, failed to reimburse for business expenses, failure to provide  
4 accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum  
5 wage and overtime, exist as to all members of the class and predominate over any questions  
6 affecting solely any individual members of the class. Among the questions of law and fact  
7 common to the class are:

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

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

4           53. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as  
5 a result of DEFENDANT's conduct and actions alleged herein.

6           54. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and  
7 PLAINTIFF have the same interests as the other members of the class.

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

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

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

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

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

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

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

4 b. Adjudication with respect to individual members of the CALIFORNIA CLASS  
5 which would as a practical matter be dispositive of the interests of the other  
6 members not party to the adjudication or substantially impair or impeded their  
7 ability to protect their interests.

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

11 **FIRST CAUSE OF ACTION**

12 **Unlawful Business Practices**

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

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

15 62. 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 63. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
19 Code § 17021.

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

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

1           65. By the conduct alleged herein, DEFENDANT has engaged and continues to  
2 engage in a business practice which violates California law, including but not limited to, the  
3 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
4 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and  
5 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.  
6 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
7 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

26           69. By the conduct alleged herein, DEFENDANT's practices were also unfair and  
27 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide  
28

1 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as  
2 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

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

27 75. PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
28 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
2 engaging in any unlawful and unfair business practices in the future.

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

10 **SECOND CAUSE OF ACTION**

11 **Failure To Pay Minimum Wages**

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

13 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

17 78. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for  
18 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial  
19 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay  
20 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

26 81. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,  
27 including minimum wage compensation and interest thereon, together with the costs of suit.  
28

1           82.     DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the  
2 other members of the CALIFORNIA CLASS without regard to the correct amount of time they  
3 work. As set forth herein, DEFENDANT’s uniform policy and practice was to unlawfully and  
4 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the  
5 CALIFORNIA CLASS.

6           83.     DEFENDANT’s uniform pattern of unlawful wage and hour practices manifested,  
7 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
8 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF  
9 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

16          85.     As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,  
17 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
18 minimum wage compensation for their time worked for DEFENDANT.

19          86.     During the CLASS PERIOD, PLAINTIFF and the other members of the  
20 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a  
21 failure to pay all earned wages.

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

27          88.     DEFENDANT knew or should have known that PLAINTIFF and the other  
28 members of the CALIFORNIA CLASS were under-compensated for their time worked.

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

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

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

25  
26  
27  
28 ///



1 **THIRD CAUSE OF ACTION**

2 **Failure To Pay Overtime Compensation**

3 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

5 91. 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 92. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for  
9 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial  
10 Welfare Commission requirements for DEFENDANT's failure to pay these employees for all  
11 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or  
12 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

25 97. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
26 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
27 implementing a uniform policy and practice that failed to accurately record overtime worked by  
28 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to

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

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

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

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

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

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

1 failed to accurately record and pay as evidenced by DEFENDANT's business records and  
2 witnessed by employees.

3 103. 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 the true  
5 amount of overtime they worked, 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.

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

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

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

1 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which  
2 penalties are sought herein. DEFENDANT’s conduct as alleged herein was willful, intentional,  
3 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are  
4 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)**

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

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

26 109. 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 meal 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 a  
2 meal period was not provided.

3 110. 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 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

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

10 111. 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.

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

27 113. 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 rest 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 rest  
3 period was not provided.

4 114. 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 **SIXTH CAUSE OF ACTION**

8 **Failure To Reimburse Employees for Required Expenses**

9 **(Cal. Lab. Code §§ 2802)**

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

11 115. 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.

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

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

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

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

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

11 **SEVENTH CAUSE OF ACTION**

12 **Failure To Pay Wages When Due**

13 **(Cal. Lab. Code § 203)**

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. Cal. Lab. Code § 200 provides that:

19 As used in this article:

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

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

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

If an employee not having a written contract for a definite period quits his or her  
employment, his or her wages shall become due and payable not later than 72 hours  
thereafter, unless the employee has given 72 hours previous notice of his or her intention

1 to quit, in which case the employee is entitled to his or her wages at the time of quitting.  
2 Notwithstanding any other provision of law, an employee who quits without providing a  
3 72-hour notice shall be entitled to receive payment by mail if he or she so requests and  
4 designates a mailing address. The date of the mailing shall constitute the date of payment  
5 for purposes of the requirement to provide payment within 72 hours of the notice of  
6 quitting.

7 123. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS  
8 Members' employment contract.

9 124. Cal. Lab. Code § 203 provides:

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

15 125. The employment of PLAINTIFF and many CALIFORNIA CLASS Members  
16 terminated, and DEFENDANT has not tendered payment of wages to these employees who  
17 missed meal and rest breaks, as required by law.

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

### 23 **EIGHTH CAUSE OF ACTION**

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

25 **(Cal. Lab. Code § 226)**

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

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

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

a. Gross wages earned,



- 1           b. (2) total hours worked by the employee, except for any employee whose
- 2           compensation is solely based on a salary and who is exempt from payment of
- 3           overtime under subdivision (a) of Section 515 or any applicable order of the
- 4           Industrial Welfare Commission,
- 5           c. the number of piece-rate units earned and any applicable piece rate if the employee
- 6           is paid on a piece-rate basis,
- 7           d. all deductions, provided that all deductions made on written orders of the employee
- 8           may be aggregated and shown as one item,
- 9           e. net wages earned,
- 10          f. the inclusive dates of the period for which the employee is paid,
- 11          g. the name of the employee and his or her social security number, except that by
- 12             January 1, 2008, only the last four digits of his or her social security number of an
- 13             employee identification number other than social security number may be shown
- 14             on the itemized statement,
- 15          h. the name and address of the legal entity that is the employer, and
- 16          i. all applicable hourly rates in effect during the pay period and the corresponding
- 17             number of hours worked at each hourly rate by the employee.

18           129. When DEFENDANT did not accurately record PLAINTIFF'S and other  
19 CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed  
20 meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal.  
21 Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA  
22 CLASS Members with complete and accurate wage statements which failed to show, among other  
23 things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked  
24 and all applicable hourly rates in effect during the pay period and the corresponding amount of  
25 time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal  
26 and rest periods.

27  
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1 130. In addition to the foregoing, DEFENDANT failed to provide itemized wage  
2 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the  
3 requirements of California Labor Code Section 226.

4 131. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code  
5 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA  
6 CLASS. These damages include, but are not limited to, costs expended calculating the correct  
7 wages for all missed meal and rest breaks and the amount of employment taxes which were not  
8 properly paid to state and federal tax authorities. These damages are difficult to estimate.  
9 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover  
10 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation  
11 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period  
12 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no  
13 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member  
14 of the CALIFORNIA CLASS herein).

15 **NINTH CAUSE OF ACTION**

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

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

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

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

21 133. PAGA is a mechanism by which the State of California itself can enforce state  
22 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the  
23 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is  
24 fundamentally a law enforcement action designed to protect the public and not to benefit private  
25 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means  
26 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting  
27 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved  
28

1 employees, acting as private attorneys general to recover civil penalties for Labor Code violations  
2 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

3 134. PLAINTIFF, and such persons that may be added from time to time who satisfy  
4 the requirements and exhaust the administrative procedures under the Private Attorney General  
5 Act, bring this Representative Action on behalf of the State of California with respect to himself  
6 and all employees who worked for Defendant in California during the time period of November  
7 29, 2021 until the present (the "AGGRIEVED EMPLOYEES").

8 135. On November 29, 2022, PLAINTIFF gave written notice by certified mail to the  
9 Labor and Workforce Development Agency (the "Agency") and the employer of the specific  
10 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See  
11 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting  
12 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant  
13 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA  
14 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED  
15 EMPLOYEES as herein defined.

16 136. The policies, acts and practices heretofore described were and are an unlawful  
17 business act or practice because DEFENDANTS (a) failed to pay AGGRIEVED EMPLOYEES  
18 minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally  
19 required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct  
20 regular rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, and (e)  
21 failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor  
22 Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,  
23 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1,  
24 1197.14, 1198, 1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and thereby  
25 gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of  
26 civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the  
27 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and  
28 the other AGGRIEVED EMPLOYEES.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF pray 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, Seventh, and Eighth  
17 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant  
18 to Cal. Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory  
20 damages for overtime compensation due to PLAINTIFF and the other members of  
21 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest  
22 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 greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
26 which a violation occurs and one hundred dollars (\$100) per each member of the  
27 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding  
28 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for

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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.

f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004;

4. On all claims:

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

DATED: February 3, 2023

**JCL LAW FIRM, APC**

By:   
\_\_\_\_\_  
Jean-Claude Lanuyde  
Attorney for PLAINTIFF

**DEMAND FOR A JURY TRIAL**

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

DATED: February 3, 2023

**JCL LAW FIRM, APC**

By:   
\_\_\_\_\_  
Jean-Claude Lanuyde  
Attorney for PLAINTIFF

# **EXHIBIT 1**



Client #56301

November 29, 2022

**Via Online Filing to LWDA and Certified Mail to Defendant**  
**Labor and Workforce Development Agency**  
Online Filing

**DCH TORRANCE IMPORTS INC.**

c/o National Registered Agents, Inc.  
28 Liberty Street  
New York, NY 10005

***Via Certified U.S. Mail with Return Receipt No. 7022 2410 0000 2184 0027***

c/o Registered Agent  
330 N. Brand Blvd.  
Glendale, CA 91203

***Via Certified U.S. Mail with Return Receipt No. 7022 2410 0000 2184 0034***

**Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

Our offices represent Plaintiff AARON CASTRO (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant DCH TORRANCE IMPORTS INC. (“Defendant”). Plaintiff has been employed by Defendant in California since December of 2012 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Plaintiff also worked at times for Defendant as a commission-based sales employee entitled to be separately compensated for his non-productive time, including rest periods. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

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

applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,



Shani O. Zakay  
Attorney for Plaintiff



**JCL LAW FIRM, APC**

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Attorneys for PLAINTIFF

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF LOS ANGELES**

AARON CASTRO, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiffs,

v.

DCH TORRANCE IMPORTS INC., a California corporation; and DOES 1-50, Inclusive,

Defendants.

Case No:

**CLASS ACTION COMPLAINT FOR:**

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

- LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
  - 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
  - 8) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226.

**DEMAND FOR A JURY TRIAL**

PLAINTIFF AARON CASTRO (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees, allege on information and belief, except for her own acts and knowledge which are based on personal knowledge, the following:

**PRELIMINARY ALLEGATIONS**

1. Defendant DCH TORRANCE IMPORTS INC. (“DEFENDANT” and/or “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANT owns, operates, and/or manages automotive dealerships throughout the state of California, including in the county of Los Angeles, where PLAINTIFF worked.

3. PLAINTIFF has been employed by DEFENDANT in California since December of 2012 as a non-exempt employee, paid in part an hourly basis and non-discretionary bonuses, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all persons who are or previously were employed by DEFENDANT in California and classified as non-exempt, exempt, piece-rate based and/or commission-based employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing 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).

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

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

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

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

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

12           10.    DEFENDANT’s uniform policies and practices alleged herein were unlawful,  
13 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain  
14 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

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

20    **JURISDICTION AND VENUE**

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

25           13.    Venue is proper in this Court pursuant to California Code of Civil Procedure,  
26 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs  
27 the CALIFORNIA CLASS across California, including in this County, and committed the  
28 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

1 **THE CONDUCT**

2 14. 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 and other members of the CALIFORNIA CLASS  
9 for off-the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA  
10 CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other  
11 members of the CALIFORNIA CLASS meal rest premiums at the regular rate, failed to reimburse  
12 PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue  
13 to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage  
14 statements showing, among other things, all applicable hourly rates in effect during the pay  
15 periods and the corresponding amount of time worked at each hourly rate. DEFENDANT’s  
16 uniform policies and practices are intended to purposefully avoid the accurate and full payment  
17 for all time worked as required by California law which allows DEFENDANT to illegally profit  
18 and gain an unfair advantage over competitors who comply with the law. To the extent equitable  
19 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CLASS  
20 PERIOD should be adjusted accordingly.

21 **A. Meal Period Violations**

22 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was  
23 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,  
24 meaning the time during which an employee is subject to the control of an employer, including  
25 all the time the employee is suffered or permitted to work. From time to time during the CLASS  
26 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work  
27 without paying them for all the time they were under DEFENDANT’s control. Specifically,  
28 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be

1 PLAINTIFF'S off-duty meal break. Indeed, there were many days where PLAINTIFF did not  
2 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS  
3 Members forfeited minimum wage and overtime compensation by regularly working without their  
4 time being accurately recorded and without compensation at the applicable minimum wage and  
5 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other  
6 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business  
7 records.

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

24 **B. Rest Period Violations**

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

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

11 **C. Unreimbursed Business Expenses**

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

23 19. In the course of their employment, DEFENDANT required PLAINTIFF and other  
24 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell  
25 phones and vehicles as a result of and in furtherance of their job duties. Specifically, PLAINTIFF  
26 and other CALIFORNIA CLASS Members were required to use their own cell phones in order  
27 to communicate with customers, in addition to their own personal vehicles to complete work-  
28 related tasks. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other

1 CALIFORNIA CLASS Members for their use of their own personal cell phones and personal  
2 vehicles. As a result, in the course of their employment with DEFENDANT, the PLAINTIFF and  
3 other CALIFORNIA CLASS Members incurred unreimbursed business expenses that included,  
4 but were not limited to, costs related to their personal cell phones and personal vehicles, all on  
5 behalf of and for the benefit of DEFENDANT.

6 **D. Wage Statement Violations**

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

15 21. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
16 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for  
17 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also  
18 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and  
19 accurate wage statements which failed to show, among other things, all deductions, the total hours  
20 worked and all applicable hourly rates in effect during the pay period, and the corresponding  
21 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed  
22 meal and rest periods.

23 22. In addition to the foregoing, DEFENDANT, from time to time, failed to provide  
24 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with  
25 Cal. Lab. Code § 226.

26 23. As a result, DEFENDANT issued PLAINTIFF and other members of the  
27 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,  
28



1 DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional  
2 payroll error due to clerical or inadvertent mistake.

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

4 24. During the CLASS PERIOD, from time-to-time DEFENDANT failed and  
5 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS  
6 for all hours worked.

7 25. During the CLASS PERIOD, from time-to-time DEFENDANT required  
8 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift  
9 working. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have  
10 to work while off-the-clock.

11 26. During the CASS PERIOD, from time-to-time DEFENDANT required  
12 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work on the weekends  
13 without allowing PLAINTIFF and other members of the CALIFORNIA CLASS to clock in.

14 27. DEFENDANT directed and directly benefited from the undercompensated off-the-  
15 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

16 28. DEFENDANT controlled the work schedules, duties, and protocols, applications,  
17 assignments, and employment conditions of PLAINTIFF and the other members of the  
18 CALIFORNIA CLASS.

19 29. DEFENDANT was able to track the amount of time PLAINTIFF and the other  
20 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to  
21 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all  
22 wages earned and owed for all the work they performed.

23 30. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-  
24 exempt employees, subject to the requirements of the California Labor Code.

25 31. DEFENDANT's policies and practices deprived PLAINTIFF and the other  
26 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed  
27 for the off-the-clock work activities. Because PLAINTIFF and the other members of the  
28 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than

1 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime  
2 pay.

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

5 33. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
6 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and  
7 benefit for the time spent working while off-the-clock. DEFENDANT's uniform policy and  
8 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all  
9 hours worked in accordance with applicable law is evidenced by DEFENDANT's business  
10 records.

11 **F. Commission and Piece-Rate Based Violations**

12 34. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and  
13 the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those  
14 instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission  
15 and/or piece-rate basis, PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately  
16 compensated for all non-productive time at an hourly rate that is no less than the applicable  
17 minimum wage. Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA  
18 CLASS were paid in part on a commission and/or piece-rate basis, DEFENDANT failed to  
19 separately compensate PLAINTIFF and the CALIFORNIA CLASS for all non-productive time,  
20 including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable  
21 minimum wage. As a result, PLAINTIFF and the CALIFORNIA CLASS forfeited minimum  
22 wages and overtime wages by DEFENDANT'S failure to separately compensate their non-  
23 productive time at an hourly rate that is no less than the applicable minimum wage.

24 **G. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**  
25 **and Redeemed Sick Pay**

26 35. From time to time during the CLASS PERIOD, DEFENDANT failed and  
27 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS  
28 Members for their overtime and double time hours worked, meal and rest period premiums, and

1 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members  
2 forfeited wages due to them for working overtime without compensation at the correct overtime  
3 and double time rates, meal and rest period premiums, and redeemed sick pay rates.  
4 DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at  
5 the correct rate for all overtime and double time worked, meal and rest period premiums, and  
6 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT's business  
7 records.

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

12         37. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
13 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid  
14 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for  
15 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly  
16 basis with bonus compensation when the employees met the various performance goals set by  
17 DEFENDANTS.

18         38. However, from-time-to-time, when calculating the regular rate of pay, in those pay  
19 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double  
20 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-  
21 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus  
22 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked  
23 rather than just all non-overtime hours worked. Management and supervisors described the  
24 incentive/bonus program to potential and new employees as part of the compensation package.  
25 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA  
26 CLASS members must be included in the "regular rate of pay." The failure to do so has resulted  
27 in a systematic underpayment of overtime and double time compensation, meal and rest period  
28 premiums, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS members by

1 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time  
2 for non-employees shall be calculated in the same manner as the regular rate of pay for the  
3 workweek in which the non-exempt employee uses paid sick time, whether or not the employee  
4 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by  
5 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of  
6 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is  
7 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

19         **H. Unlawful Rounding Practices**

20         40. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in  
21 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other  
22 CALIFORNIA CLASS Members for the actual time these employees worked each day, including  
23 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and  
24 practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being  
25 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did  
26 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping  
27 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying  
28 these employees for all their time worked, including the applicable overtime compensation for

1 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from  
2 time to time, forfeited compensation for their time worked by working without their time being  
3 accurately recorded and without compensation at the applicable overtime rates.

4 41. Further, the mutability of DEFENDANTS' timekeeping system and unlawful  
5 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'  
6 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful  
7 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to  
8 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without  
9 receiving an off-duty meal break.

10 **I. Timekeeping Manipulation**

11 42. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an  
12 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of  
13 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the  
14 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal  
15 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally  
16 alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and other  
17 members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours  
18 worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed  
19 rest break.

20 43. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from  
21 time-to-time, forfeited time worked by working without their time being accurately recorded and  
22 without compensation at the applicable pay rates.

23 44. The mutability of the timekeeping system also allowed DEFENDANTS to alter  
24 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'  
25 timekeeping system so as to create the appearance that PLAINTIFF and other members of the  
26 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees  
27 were not at all times provided an off-duty meal break. This practice is a direct result of  
28

1 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)  
2 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

3 45. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
4 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit  
5 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and  
6 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all  
7 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business  
8 records.

9 **J. Violations for Untimely Payment of Wages**

10 46. Pursuant to California Labor Code section 204, PLAINTIFF and the  
11 CALIFORNIA CLASS members were entitled to timely payment of wages during their  
12 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not  
13 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,  
14 meal period premium wages, and rest period premium wages within permissible time period.

15 **K. Unlawful Deductions**

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

20 48. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take  
21 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.  
22 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)  
23 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to  
24 provide PLAINTIFF with a second off-duty meal period each workday in which he was required  
25 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF  
26 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.  
27 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was  
28 supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks

1 without additional compensation and in accordance with DEFENDANT’S strict corporate policy  
2 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to  
3 comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse PLAINTIFF for  
4 the use of his personal vehicle in violation of Cal. Lab. Code § 2802. To date, DEFENDANT has  
5 not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to  
6 him or any penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy  
7 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

8 **CLASS ACTION ALLEGATIONS**

9 49. PLAINTIFF bring this Class Action on behalf of himself, and a California class  
10 defined as all persons who are or previously were employed by DEFENDANT in California and  
11 classified as non-exempt, exempt, piece-rate based and/or commission-based employees (the  
12 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing  
13 of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”).

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

20 51. The members of the class are so numerous that joinder of all class members is  
21 impractical.

22 52. Common questions of law and fact regarding DEFENDANT’s conduct, including  
23 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately  
24 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the  
25 regular rate of compensation for missed meal and rest period premiums, failing to provide legally  
26 compliant meal and rest periods, failed to reimburse for business expenses, failure to provide  
27 accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum  
28 wage and overtime, exist as to all members of the class and predominate over any questions

1 affecting solely any individual members of the class. Among the questions of law and fact  
2 common to the class are:

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

27 53. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as  
28 a result of DEFENDANT's conduct and actions alleged herein.



1           54. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and  
2 PLAINTIFF have the same interests as the other members of the class.

3           55. PLAINTIFF will fairly and adequately represent and protect the interests of the  
4 CALIFORNIA CLASS Members.

5           56. PLAINTIFF retained able class counsel with extensive experience in class action  
6 litigation.

7           57. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the  
8 interest of the other CALIFORNIA CLASS Members.

9           58. There is a strong community of interest among PLAINTIFF and the members of  
10 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are  
11 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries  
12 sustained.

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

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

24           a. Inconsistent or varying adjudications with respect to individual members of the  
25 CALIFORNIA CLASS which would establish incompatible standards of conduct  
26 for the parties opposing the CALIFORNIA CLASS; and/or,

27           b. Adjudication with respect to individual members of the CALIFORNIA CLASS  
28 which would as a practical matter be dispositive of the interests of the other

1 members not party to the adjudication or substantially impair or impeded their  
2 ability to protect their interests.

3 61. Class treatment provides manageable judicial treatment calculated to bring an  
4 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of  
5 the conduct of DEFENDANT.

6 **FIRST CAUSE OF ACTION**

7 **Unlawful Business Practices**

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

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

10 62. 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 63. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
14 Code § 17021.

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

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

26 65. By the conduct alleged herein, DEFENDANT has engaged and continues to  
27 engage in a business practice which violates California law, including but not limited to, the  
28 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and  
2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.

1 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
2 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

17         68. By the conduct alleged herein, DEFENDANT’s practices were also unlawful,  
18 unfair, and deceptive in that DEFENDANT’s employment practices caused PLAINTIFF and the  
19 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
20 DEFENDANT.

21         69. By the conduct alleged herein, DEFENDANT’s practices were also unfair and  
22 deceptive in that DEFENDANT’s uniform policies, practices and procedures failed to provide  
23 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as  
24 required by Cal. Lab. Code §§ 226.7 and 512.

25         70. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each  
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal  
27 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for  
28

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)  
2 hours of work.

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

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

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

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

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

26 76. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of  
28 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other  
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal  
3 and economic harm unless DEFENDANT is restrained from continuing to engage in these  
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **Failure To Pay Minimum Wages**

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

8 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

12 78. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for  
13 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial  
14 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay  
15 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

18 80. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
19 commission is the minimum wage to be paid to employees, and the payment of a less wage than  
20 the minimum so fixed is unlawful.

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

23 82. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the  
24 other members of the CALIFORNIA CLASS without regard to the correct amount of time they  
25 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and  
26 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the  
27 CALIFORNIA CLASS.

28

1           83.    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 denies accurate compensation to PLAINTIFF  
4 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

11           85.    As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,  
12 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
13 minimum wage compensation for their time worked for DEFENDANT.

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

17           87.    By virtue of DEFENDANT’s unlawful failure to accurately pay all earned  
18 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true  
19 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have  
20 suffered and will continue to suffer an economic injury in amounts which are presently unknown  
21 to them, and which will be ascertained according to proof at trial.

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

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

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

20   **THIRD CAUSE OF ACTION**

21   **Failure To Pay Overtime Compensation**

22   **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

23   **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

27           92. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for  
28 DEFENDANT’s willful and intentional violations of the California Labor Code and the Industrial

1 Welfare Commission requirements for DEFENDANT's failure to pay these employees for all  
2 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or  
3 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

13 96. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members  
14 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time  
15 they worked, including overtime work.

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

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



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

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

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

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

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

27           104. DEFENDANT knew or should have known that PLAINTIFF and the other  
28 members of the CALIFORNIA CLASS were undercompensated for their time worked.

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

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

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

24 **FOURTH CAUSE OF ACTION**

25 **Failure To Provide Required Meal Periods**

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

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

28

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

4 108. During the CLASS PERIOD, DEFENDANT failed to provide all the legally  
5 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as  
6 required by the applicable Wage Order and Labor Code. The nature of the work performed by  
7 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being  
8 relieved of all of their duties for the legally required off-duty meal periods. As a result of their  
9 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not  
10 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's  
11 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required  
12 meal breaks prior to their fifth (5<sup>th</sup>) hour of work is evidenced by DEFENDANT's business  
13 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS  
14 Members with a second off-duty meal period in some workdays in which these employees were  
15 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other  
16 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation  
17 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

26 **FIFTH CAUSE OF ACTION**

27 **Failure To Provide Required Rest Periods**

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

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

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

5           112. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were  
6 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.  
7 Further, these employees were denied their first rest periods of at least ten (10) minutes for some  
8 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)  
9 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and  
10 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.  
11 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour  
12 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other  
13 CALIFORNIA CLASS Members were periodically denied their proper rest periods by  
14 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate  
15 PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the  
16 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide  
17 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest  
18 periods is evidenced by DEFENDANT's business records.

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

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

27  
28

**SIXTH CAUSE OF ACTION**

**Failure To Reimburse Employees for Required Expenses**

**(Cal. Lab. Code §§ 2802)**

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

115. 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.

116. Cal. Lab. Code § 2802 provides, in relevant part, that:  
An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

117. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which included, but were not limited to, the use of their personal cell phones and personal vehicles all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell phones and personal vehicles to execute their essential job duties on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting from the purchase of such equipment and tools for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

1 118. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred  
2 by him and the CALIFORNIA CLASS members in the discharge of their job duties for  
3 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory  
4 rate and costs under Cal. Lab. Code § 2802.

5 **SEVENTH CAUSE OF ACTION**

6 **Failure To Pay Wages When Due**

7 **(Cal. Lab. Code § 203)**

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

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

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

13 As used in this article:

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

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

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

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

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

1 124. Cal. Lab. Code § 203 provides:

2 If an employer willfully fails to pay, without abatement or reduction, in accordance with  
3 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who  
4 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.

5 125. The employment of PLAINTIFF and many CALIFORNIA CLASS Members  
6 terminated, and DEFENDANT has not tendered payment of wages to these employees who  
7 missed meal and rest breaks, as required by law.

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

13 **EIGHTH CAUSE OF ACTION**

14 **Failure To Provide Accurate Itemized Statements**

15 **(Cal. Lab. Code § 226)**

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

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

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

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

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

129. When DEFENDANT did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

130. In addition to the foregoing, DEFENDANT failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

131. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct



1 wages for all missed meal and rest breaks and the amount of employment taxes which were not  
2 properly paid to state and federal tax authorities. These damages are difficult to estimate.  
3 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover  
4 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation  
5 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period  
6 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no  
7 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member  
8 of the CALIFORNIA CLASS herein).

9 **PRAYER FOR RELIEF**

10 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and  
11 severally, as follows:

12 1. On behalf of the CALIFORNIA CLASS:

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

23 2. On behalf of the CALIFORNIA CLASS:

- 24 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth  
25 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant  
26 to Cal. Code of Civ. Proc. § 382;  
27 b. Compensatory damages, according to proof at trial, including compensatory  
28 damages for overtime compensation due to PLAINTIFF and the other members of

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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.
- f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On all claims:

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

DATED: November 29, 2022

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for PLAINTIFF

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**DEMAND FOR A JURY TRIAL**

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

DATED: November 29, 2022

**ZAKAY LAW GROUP, APLC**

By:   
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Shani O. Zakay  
Attorney for PLAINTIFF

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