

SUMMONS (CITACION JUDICIAL)

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

UGLYFIGHTERS MOTORCYCLES, LLC, a California limited liability company; and DOES 1-50, Inclusive,

Electronically FILED by
Superior Court of California,
County of Los Angeles
10/04/2023 10:49 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By I. Baytalyants, Deputy Clerk

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

DANIEL RIVAS, an individual, in his representative capacity on behalf of the State of California and fellow Aggrieved Employees,

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California - Chatsworth Courthouse
9425 Penfield Avenue
Chatsworth, CA 91311

CASE NUMBER: 23CHCV02986
(Número del Caso):

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

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

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE:

(Fecha) 10/04/2023

Clerk, by I. Baytalyants, Deputy
(Secretario) *(Adjunto)*

*(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)**(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).***NOTICE TO THE PERSON SERVED:** You are served

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



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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DANIEL RIVAS, an individual, in his
representative capacity on behalf of the State of
California and fellow Aggrieved Employees,

Plaintiff,

v.

UGLYFIGHTERS MOTORCYCLES, LLC, a
California limited liability company; and DOES
1-50, Inclusive,

Defendants.

Case No: **23CH0V02986**

REPRESENTATIVE ACTION
COMPLAINT FOR:

- 1) VIOLATIONS OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ

1 PLAINTIFF DANIEL RIVAS (“PLAINTIFF”), an individual, in his representative capacity
2 and on behalf of the State of California and fellow current and former AGGRIEVED
3 EMPLOYEES, defined *supra*, against UGLYFIGHTERS MOTORCYCLES, LLC, a California
4 limited liability company (“DEFENDANT” and/or “DEFENDANTS”), alleges on information and
5 belief, except for his own acts and knowledge which are based on personal knowledge, the
6 following:

7 **INTRODUCTION**

8 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys
9 General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of the LWDA
10 and other current and former aggrieved employees of DEFENDANT for engaging in a pattern
11 and practice of wage and hour violations under the California Labor Code.

12 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
13 decreased their employment-related costs by systematically violating California wage and hour
14 laws.

15 3. DEFENDANT’S systematic pattern of wage and hour and IWC Wage Order
16 violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 17 a. Failure to provide compliant meal and rest periods;
- 18 b. Failure to allow employees to take duty-free meal and rest periods;
- 19 c. Failure to pay all minimum, sick pay, regular and overtime wages;
- 20 d. Failure to correctly calculate the regular rate of pay;
- 21 e. Failure to pay within seven (7) days of the close of payroll;
- 22 f. Failure to pay for all hours worked;
- 23 g. Failure to maintain true and accurate records;
- 24 h. Failure to reimburse for required business expenses;
- 25 i. Failure to provide accurate itemized wage statements; and
- 26 j. Failure to timely pay wages due during, and upon termination of employment.

27 4. PLAINTIFF brings this representative action against DEFENDANT on behalf of
28 the LWDA and all other aggrieved employees of DEFENDANT in California seeking all civil
penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

1 5. PLAINTIFF reserves the right to name additional representatives throughout the
 2 State of California.

3 **THE PARTIES**

4 6. Defendant UGLYFIGHTERS MOTORCYCLES, LLC (“DEFENDANT” or
 5 “DEFENDANT”) is a California limited liability company that at all relevant times mentioned
 6 herein conducted and continues to conduct substantial and regular business throughout California.

7 7. DEFENDANT was the employer of PLAINTIFF as evidenced by the documents
 8 issued to PLAINTIFF and by the company PLAINTIFF performed work for.

9 8. DEFENDANT owns and operates motorcycle dealerships throughout the state of
 10 California, including in the county of Los Angeles.

11 9. PLAINTIFF was employed by DEFENDANT in California from March of 2022
 12 to March of 2023, paid in part an hourly wage, non-discretionary bonuses, commissions, and
 13 entitled to the legally required meal and rest periods and payment of minimum and overtime
 14 wages due for all time worked.

15 10. PLAINTIFF brings this action in in his representative capacity on behalf of the
 16 State of California and on behalf of all non-exempt, exempt, commission-based and/or piece-rate
 17 based employees employed by DEFENDANT in California (hereinafter “AGGRIEVED
 18 EMPLOYEES”) between July 6, 2022, and the present (“PAGA Period”).

19 11. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor
 20 Code § 2699(c) because he was employed by DEFENDANT and suffered one or more of the
 21 alleged Labor Code violations committed by DEFENDANT.

22 12. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times
 23 were, employees of DEFENDANT, within the meanings set forth in the California Labor Code
 24 and the applicable Industrial Welfare Commission Wage Order.

25 13. Each of the fictitiously named defendants participated in the acts alleged in this
 26 Complaint. The true names and capacities of the Defendants named as DOES 1 THROUGH 50,
 27 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting
 28 forth the true names and capacities of these fictitiously named Defendants when their true names

1 are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the
2 fictitious Defendants have participated in the acts alleged in this Complaint.

3 14. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively
4 “DEFENDANTS”), were PLAINTIFF’S employers or persons acting on behalf of PLAINTIFF’S
5 employer, within the meaning of California Labor Code § 558, who violated or caused to be
6 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
7 hours and days of work in any order of the Industrial Welfare Commission and, as such, are
8 subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all
9 relevant times.

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

15 **JURISDICTION AND VENUE**

16 16. This Court has jurisdiction over this Action pursuant to California Code of Civil
17 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
18 Court has jurisdiction over AGGRIEVED EMPLOYEES’ claims for civil penalties under the
19 Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*

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

25 **THE CONDUCT**

26 18. In violation of the applicable sections of the California Labor Code and the
27 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a
28 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically

1 failed to provide legally compliant meal and rest periods, failed to accurately compensate
2 PLAINTIFF and AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay
3 PLAINTIFF and AGGRIEVED EMPLOYEES for all time worked, failed compensate
4 PLAINTIFF and AGGRIEVED EMPLOYEES for off-the-clock work, failed to pay PLAINTIFF
5 and AGGRIEVED EMPLOYEES overtime at the correct regular rate of pay, failed to compensate
6 PLAINTIFF and AGGRIEVED EMPLOYEES meal rest premiums at the regular rate, failed to
7 reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for business expenses, and failed
8 to issue to PLAINTIFF and AGGRIEVED EMPLOYEES with accurate itemized wage statements
9 showing, among other things, all applicable hourly rates in effect during the pay periods and the
10 corresponding amount of time worked at each hourly rate. DEFENDANT's uniform policies and
11 practices are intended to purposefully avoid the accurate and full payment for all time worked as
12 required by California law which allows DEFENDANT to illegally profit and gain an unfair
13 advantage over competitors who comply with the law. To the extent equitable tolling operates to
14 toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD
15 should be adjusted accordingly.

16 **A. Meal Period Violations**

17 19. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
18 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning
19 the time during which an employee is subject to the control of an employer, including all the time
20 the employee is suffered or permitted to work. From time to time during the PAGA PERIOD,
21 DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying
22 them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT
23 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S
24 off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a
25 partial lunch. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
26 minimum wage and overtime compensation by regularly working without their time being
27 accurately recorded and without compensation at the applicable minimum wage and overtime
28 rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other

1 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT’s business
2 records.

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

22 **B. Rest Period Violations**

23 21. From time to time during the PAGA PERIOD, PLAINTIFF and other
24 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without being
25 provided ten (10) minute rest periods as a result of their rigorous work requirements and
26 DEFENDANT’s inadequate staffing. Further, for the same reasons, these employees were denied
27 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
28 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some

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

12 **C. Unreimbursed Business Expenses**

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

24 23. In the course of their employment, DEFENDANT required PLAINTIFF and other
25 AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell phones,
26 personal computer, and home internet as a result of and in furtherance of their job duties.
27 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to use their own
28 cell phones, computers, and home internet in order to perform work related tasks. However,

1 DEFENDANT unlawfully failed to reimburse PLAINTIFF and other AGGRIEVED
2 EMPLOYEES for the personal expenses incurred for the use of their personal cell phones,
3 computers, and home internet. As a result, in the course of their employment with DEFENDANT,
4 the PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business
5 expenses that included, but were not limited to, costs related to the use of their personal cell
6 phones, computers, and home internet, all on behalf of and for the benefit of DEFENDANT.

7 **D. Wage Statement Violations**

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

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

24 26. Further, from time to time during the PAGA PERIOD, DEFENDANT included,
25 among other things, "Vacation," "Sick Pay," and "Personal Day" hours into the computation of
26 total hours worked for purposes of Cal. Lab. Code §226(a)(2), notwithstanding the fact that
27 Vacation, Sick Pay, and Personal Day hours are not considered hours worked. DEFENDANT'S
28 inclusion of, among other things, Vacation, Sick Pay, and Personal Day hours into the total hours

1 worked in itemized wage statements issued to PLAINTIFF and other AGGRIEVED
2 EMPLOYEES violates Cal. Lab. Code §226(a)(2).

3 27. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
4 PLAINTIFF and the AGGRIEVED EMPLOYEES Members with wage statements that comply
5 with Cal. Lab. Code § 226.

6 28. As a result, DEFENDANT issued PLAINTIFF and AGGRIEVED EMPLOYEES
7 with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's violations are
8 knowing and intentional, were not isolated due to an unintentional payroll error due to clerical or
9 inadvertent mistake.

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

11 29. During the PAGA PERIOD, from time-to-time DEFENDANT failed and
12 continues to fail to accurately pay PLAINTIFF and AGGRIEVED EMPLOYEES for all hours
13 worked.

14 30. During the PAGA PERIOD, from time-to-time DEFENDANT required
15 PLAINTIFF and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work. This
16 resulted in PLAINTIFF and AGGRIEVED EMPLOYEES to have to work while off-the-clock.

17 31. DEFENDANT directed and directly benefited from the undercompensated off-the-
18 clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

19 32. DEFENDANT controlled the work schedules, duties, and protocols, applications,
20 assignments, and employment conditions of PLAINTIFF and AGGRIEVED EMPLOYEES.

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

25 34. PLAINTIFF and AGGRIEVED EMPLOYEES were non-exempt employees,
26 subject to the requirements of the California Labor Code.

27 35. DEFENDANT's policies and practices deprived PLAINTIFF and the other
28 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for

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

4 36. DEFENDANT knew or should have known that PLAINTIFF and AGGRIEVED
5 EMPLOYEES' off-the-clock work was compensable under the law.

6 37. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to
7 them for all hours worked at DEFENDANT's direction, control, and benefit for the time spent
8 working while off-the-clock, including but not limited to, time spent submitting to Covid-19
9 screenings. DEFENDANT's uniform policy and practice to not pay PLAINTIFF and
10 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is
11 evidenced by DEFENDANT's business records.

12 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
13 **and Redeemed Sick Pay**

14 38. From time to time during the PAGA PERIOD, DEFENDANT failed and continues
15 to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES
16 for their overtime and double time hours worked, meal and rest period premiums, and redeemed
17 sick pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages
18 due to them for working overtime without compensation at the correct overtime and double time
19 rates, meal and rest period premiums, and redeemed sick pay rates. DEFENDANT's uniform
20 policy and practice not to pay the AGGRIEVED EMPLOYEES Members at the correct rate for
21 all overtime and double time worked, meal and rest period premiums, and redeemed sick pay in
22 accordance with applicable law is evidenced by DEFENDANT's business records.

23 39. State law provides that employees must be paid overtime at one-and-one-half times
24 their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were
25 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
26 employee's performance.

27 40. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a

1 matter of company policy, practice, and procedure, intentionally and knowingly failed to
2 compensate PLAINTIFF and AGGRIEVED EMPLOYEES at the correct rate of pay for all
3 overtime and double time worked, meal and rest period premiums, and sick pay. This uniform
4 policy and practice of DEFENDANT is intended to purposefully avoid the payment of the correct
5 overtime and double time compensation, meal and rest period premiums, and sick pay as required
6 by California law which allowed DEFENDANT to illegally profit and gain an unfair advantage
7 over competitors who complied with the law. To the extent equitable tolling operates to toll
8 claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should
9 be adjusted accordingly.

10 **G. Commission and Piece-Rate Violations**

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

24 42. Further, from time-to-time during the PAGA PERIOD, DEFENDANTS
25 improperly misclassified PLAINTIFF and the AGGRIEVED EMPLOYEES who were paid on a
26 draw versus commission basis as exempt from overtime compensation. During the PAGA
27 PERIOD, DEFENDANTS included advanced draws in order to meet the salary-basis test for the
28 overtime exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet

1 the salary-basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-
2 254.) As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES who were paid on a draw
3 versus commission basis forfeited overtime wages by DEFENDANTS’ failure to accurately
4 classify them as non-exempt from overtime compensation.

5 **H. Violations for Untimely Payment of Wages**

6 43. Pursuant to California Labor Code section 204, PLAINTIFF and the
7 AGGRIEVED EMPLOYEES members were entitled to timely payment of wages during their
8 employment. PLAINTIFF and the AGGRIEVED EMPLOYEES members, from time to time, did
9 not receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
10 meal period premium wages, and rest period premium wages within permissible time period.

11 44. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
12 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to
13 Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become
14 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
15 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
16 wages at the time of quitting.” PLAINTIFF and the AGGRIEVED EMPLOYEES were, from time
17 to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at
18 the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

19 **I. Unlawful Deductions**

20 45. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
21 and AGGRIEVED EMPLOYEES’ pay without explanations and without authorization to do so
22 or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES Members. As a result,
23 DEFENDANTS violated Labor Code § 221.

24 **J. Unlawful Rounding Practices**

25 46. During the AGGRIEVED EMPLOYEES PERIOD, DEFENDANTS did not have
26 in place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
27 AGGRIEVED EMPLOYEES 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 PLAINTIFF and AGGRIEVED EMPLOYEES being undercompensated
2 for all of their time worked. As a result, DEFENDANTS were able to and did in fact unlawfully,
3 and unilaterally round the time recorded in DEFENDANT’S timekeeping system for PLAINTIFF
4 and AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time
5 worked, including the applicable overtime compensation for overtime worked. As a result,
6 PLAINTIFF and other AGGRIEVED EMPLOYEES, from time to time, forfeited compensation
7 for their time worked by working without their time being accurately recorded and without
8 compensation at the applicable overtime rates.

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

15 **K. Timekeeping Manipulation**

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

24 49. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES, from time-to-time,
25 forfeited time worked by working without their time being accurately recorded and without
26 compensation at the applicable pay rates.

27 50. The mutability of the timekeeping system also allowed DEFENDANTS to alter
28 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT’S

1 timekeeping system so as to create the appearance that PLAINTIFF and AGGRIEVED
2 EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were not
3 at all times provided an off-duty meal break. This practice is a direct result of DEFENDANT’S
4 uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal
5 breaks each day or otherwise compensate them for missed meal breaks.

6 51. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due
7 them for all hours worked at DEFENDANT’S direction, control and benefit for the time the
8 timekeeping system was inoperable. DEFENDANT’S uniform policy and practice to not pay
9 PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
10 applicable law is evidenced by DEFENDANT’S business records.

11 52. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
12 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
13 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
14 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
15 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
16 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
17 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
18 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was
19 supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
20 without additional compensation and in accordance with DEFENDANT’S strict corporate policy
21 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
22 comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF
23 for required business expenses related to the personal expenses incurred for the use of his personal
24 cell phone, on behalf of and in furtherance of his employment with DEFENDANT. To date,
25 DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time
26 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.
27 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
28 \$75,000.

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FIRST CAUSE OF ACTION
VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT
(Cal. Lab. Code §§2698 et seq.)
(Alleged by PLAINTIFF against all Defendants)

53. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

55. PLAINTIFF brings this Representative PAGA Action on behalf of the State of California with respect to all current and former AGGRIEVED EMPLOYEES employed by DEFENDANTS during the PAGA PERIOD.

56. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the meaning of Labor Code Section 2699(c).

57. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like PLAINTIFF, on behalf of current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3.

58. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By certified letter, return receipt requested, dated July 6, 2023, PLAINTIFF gave written notice to the Labor and Workforce Development Agency ("LWDA")

1 and to DEENDANTS of the specific provisions of the Labor Code alleged to have been violated,
2 including the facts and theories to support the alleged violations. See Exhibit #1.

3 59. As of the date of this Complaint, more than sixty-five (65) days after serving the
4 LWDA with notice and amended notice of DEFENDANT’S violations, the LWDA has not
5 provided any notice by certified mail of its intent to investigate the DEFENDANT’S alleged
6 violations as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor
7 Code Section 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause
8 of action.

9 60. PLAINTIFF brings this action in in his representative capacity on behalf of the
10 State of California and on behalf of all non-exempt, exempt, commission-based and/or piece-
11 rate based employees employed by DEFENDANT in California (hereinafter “AGGRIEVED
12 EMPLOYEES”) between July 6, 2022, and the present (“PAGA Period”).

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

26 62. For all provisions of the Labor Code for which civil penalty is not specifically
27 provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars
28 (\$100) for each AGGRIEVED EMPLOYEE, including PLAINTIFF, per pay period for the
initial violation and two hundred dollars (\$200) for each AGGRIEVED EMPLOYEE, including
PLAINTIFF, per pay period for each subsequent violation. PLAINTIFF and the AGGRIEVED

1 EMPLOYEES are entitled to an award of reasonable attorney’s fees and costs in connection with
2 their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

3 63. To the extent that any of the conduct and violations alleged herein did not affect
4 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
5 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
6 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
7 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor
8 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
9 committed by that employer.”], Emphasis added, reh’g denied (June 13, 2018).)

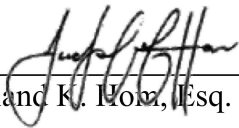
10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

- 12 1. For reasonable attorney’s fees and costs of suit to the extent permitted by law,
13 including pursuant to Labor Code § 2699, *et seq.*;
- 14 2. For civil penalties to the extent permitted by law pursuant to the Labor Code under
15 the Private Attorneys General Act; and
- 16 3. For such other relief as the Court deems just and proper.
- 17

18
19 DATED: October 3, 2023

ZAKAY LAW GROUP, APLC

20
21
22 By:  _____
23 Jackland K. Hom, Esq.

24 Attorney for PLAINTIFF

25
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27
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EXHIBIT 1



Client # 63601

July 6, 2023

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

UGLYFIGHTERS MOTORCYCLES, LLC

c/o ERESIDENTAGENT, INC.

12121 Wilshire Blvd., Suite 1120

Los Angeles, CA 90025

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0625 6794 66

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 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 DANIEL RIVAS (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant UGLYFIGHTERS MOTORCYCLES, LLC (“Defendant”). Plaintiff was employed by Defendant from March of 2022 to March of 2023, as a non-exempt employee, paid on an hourly basis and in-part on a commission basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages. Plaintiff further contends that Defendant failed to advise Plaintiff and the other aggrieved employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods when working on a commission and/or piece-rate basis and failed to separately compensate Plaintiff and the other aggrieved employees for the non-productive time, including for their rest periods. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98, 110.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him and other aggrieved employees, which among other violations 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, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 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, commission-based and/or piece-rate 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

ZAKAY LAW GROUP, APLC

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jlapuyade@jcl-lawfirm.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DANIEL RIVAS, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiff,

v.

UGLYFIGHTERS MOTORCYCLES, LLC, a California limited liability company; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 9) UNPAID SICK PAY IN VIOLATION OF CAL. LAB. CODE § 246;
- 10) BREACH OF ORAL CONTRACT.

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant UGLYFIGHTERS MOTORCYCLES, LLC (“DEFENDANT” and/or “DEFENDANTS”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANT operates full service Harley-Davidson motorcycle sales, repair, and rental stores in California, including in the county of Los Angeles, where PLAINTIFF worked.

3. PLAINTIFF was employed by DEFENDANTS in California from March of 2022 to March of 2023 as a non-exempt employee, paid on an hourly basis and in part on a commission-basis, 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, commission-based and/or piece-rate 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 DEFENDANTS' uniform policy and practice which failed to
6 lawfully compensate these employees. DEFENDANTS' uniform policy and practice alleged
7 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANTS retained
8 and continue to retain wages due 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 DEFENDANTS in the future, relief for the named PLAINTIFF and
11 the other members of the CALIFORNIA CLASS who have been economically injured by
12 DEFENDANTS' 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 PLAINTIFFS who therefore sues these DEFENDANTS by such fictitious
17 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS 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. PLAINTIFFS 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. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
15 unfair, and deceptive business practices whereby DEFENDANTS 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 DEFENDANTS in the future, relief for the named PLAINTIFF and
19 other members of the CALIFORNIA CLASS who has been economically injured by
20 DEFENDANTS' 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 DEFENDANTS operate in locations across California, employ

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

24 **A. Meal Period Violations**

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

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

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

1 **B. Rest Period Violations**

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

16 **C. Unreimbursed Business Expenses**

17 18. DEFENDANTS as a matter of corporate policy, practice, and procedure,
18 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
19 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
20 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
21 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
22 are required to indemnify employees for all expenses incurred in the course and scope of their
23 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
24 her employee for all necessary expenditures or losses incurred by the employee in direct
25 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
26 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
27 believed them to be unlawful."
28

1 19. In the course of their employment, DEFENDANTS required PLAINTIFF and
2 other CALIFORNIA CLASS Members to incur personal expenses for the use of their personal
3 cell phones, personal computers and home internet as a result of and in furtherance of their job
4 duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required to
5 use their personal cell phones, personal computers and home internet in order to perform work
6 related tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other
7 CALIFORNIA CLASS Members for the use of their personal cell phones, personal computers
8 and home internet. As a result, in the course of their employment with DEFENDANTS, the
9 PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed business
10 expenses that included, but were not limited to, costs related to the use of their personal cell
11 phones, personal computers and home internet, all on behalf of and for the benefit of
12 DEFENDANT.

13 **D. Wage Statement Violations**

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

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

1 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
2 meal and rest periods.

3 22. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
4 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
5 Cal. Lab. Code § 226.

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

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

11 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
12 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
13 for all hours worked.

14 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required
15 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
16 work, including but not limited to turning on and shutting off technology and setting up and
17 closing down specific departments. This resulted in PLAINTIFF and other members of the
18 CALIFORNIA CLASS to have to work while off-the-clock.

19 26. DEFENDANTS directed and directly benefited from the undercompensated off-
20 the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

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

24 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
25 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
26 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
27 wages earned and owed for all the work they performed.
28

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

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

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

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

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

19 33. State law provides that employees must be paid overtime at one-and-one-half times
20 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS were compensated at
21 an hourly rate plus commissions and/or non-discretionary incentive pay that was tied to specific
22 elements of an employee's performance and/or commissions.

23 34. DEFENDANTS' non-discretionary commission and bonus program provided the
24 CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation
25 when the employees met the various performance goals set by DEFENDANT. However, when
26 calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA
27 CLASS worked overtime and earned non-discretionary bonus and/or commission wages,
28

1 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or
2 commission wages as part of the employees' "regular rate of pay."

3 35. Management and supervisors described the bonus and commissions programs and
4 commission compensation program to potential and new employees as part of the compensation
5 package for new and used car salespersons including PLAINTIFF and the CALIFORNIA
6 CLASS. As a matter of law, the incentive and commission compensation received by
7 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly
8 calculated into the "regular rate of pay" for purposes of overtime and double time compensation,
9 meal and rest period premium payments, and sick pay. DEFENDANT's failure to do so has
10 resulted in DEFENDANT's systematic underpayment of overtime and double time compensation,
11 meal and rest period premium payments, and sick pay to PLAINTIFF and other CALIFORNIA
12 CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time
13 for non-employees shall be calculated in the same manner as the regular rate of pay for the
14 workweek in which the employee uses paid sick time, whether or not the employee actually works
15 overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include
16 the incentive compensation as part of the "regular rate of pay" for purposes of sick pay
17 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable
18 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

19 36. In violation of the applicable sections of the California Labor Code and the
20 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
21 matter of company policy, practice and procedure, intentionally and knowingly failed to
22 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
23 of pay for all overtime and double time compensation, meal and rest period premium payments,
24 and sick pay. This uniform policy and practice of DEFENDANTS is intended to purposefully
25 avoid the payment of the correct overtime and double time compensation, meal and rest period
26 premium payments, and sick pay as required by California law which allowed DEFENDANTS to
27 illegally profit and gain an unfair advantage over competitors who complied with the law. To the
28

1 extent equitable tolling operates to toll claims by the CALIFORNIA CLASS members against
2 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

3 **G. Commission and Piece-Rate Violations**

4 37. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
5 the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those
6 instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission
7 and/or piece-rate basis, PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately
8 compensated for all non-productive time at an hourly rate that is no less than the applicable
9 minimum wage. Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA
10 CLASS were paid in part on a commission and/or piece-rate basis, DEFENDANT failed to
11 separately compensate PLAINTIFF and the CALIFORNIA CLASS for all non-productive time,
12 including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable
13 minimum wage. As a result, PLAINTIFF and the CALIFORNIA CLASS forfeited minimum
14 wages and overtime wages by DEFENDANT’S failure to separately compensate their non-
15 productive time at an hourly rate that is no less than the applicable minimum wage.

16 38. Further, from time-to-time during the CLASS PERIOD, DEFENDANTS
17 improperly misclassified PLAINTIFF and the CALIFORNIA CLASS members who were paid
18 on a draw versus commission basis as exempt from overtime compensation. During the CLASS
19 PERIOD, DEFENDANTS included advanced draws in order to meet the salary-basis test for the
20 overtime exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet
21 the salary-basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-
22 254.) As a result, PLAINTIFF and the CALIFORNIA CLASS members who were paid on a draw
23 versus commission basis forfeited overtime wages by DEFENDANTS’ failure to accurately
24 classify them as non-exempt from overtime compensation.

25 **H. Unlawful Deductions**

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

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

3 **I. Timekeeping Manipulation**

4 40. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
5 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
6 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
7 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
8 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
9 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and
10 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
11 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
12 missed rest breaks.

13 41. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
14 time-to-time, forfeited time worked by working without their time being accurately recorded and
15 without compensation at the applicable pay rates.

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

23 43. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
24 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
25 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and
26 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
27 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
28 records.

1 **J. Unlawful Rounding Practices**

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

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

20 **K. Violations for Untimely Payment of Wages**

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

26 47. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the
27 wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant
28 to Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall

1 become due and payable not later than 72 hours thereafter, unless the employee has given 72
2 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
3 or her wages at the time of quitting.” PLAINTIFF and the CALIFORNIA CLASS Members
4 were, from time to time, not timely provided the wages earned and unpaid at the time of their
5 discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

6 48. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
7 paying all wages due at time of termination for all CALIFORNIA CLASS Members whose
8 employment ended during the CLASS PERIOD.

9 49. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
10 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
11 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
12 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
13 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
14 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided
15 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the
16 rest break. DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during
17 what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and
18 rest breaks without additional compensation and in accordance with DEFENDANTS’ strict
19 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with
20 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed
21 to reimburse PLAINTIFF for required business expenses related to the personal expenses
22 incurred for the use of his personal cell phone, personal computer and home internet, on behalf
23 of and in furtherance of his employment with DEFENDANTS. To date, DEFENDANTS have
24 not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed to
25 him or any penalty wages owed to him under Cal. Lab. Code § 203. Further, specifically as to
26 PLAINTIFF, during PLAINTIFF’s employment with DEFENDANTS, PLAINTIFF contracted
27 with DEFENDANTS, namely Matthew Miles who was employed by DEFENDANTS as a
28 manager, which entitled PLAINTIFF to earn an additional monthly commission of \$200 if

1 PLAINTIFF met DEFENDANTS’ sales goals. Pursuant to the oral agreement, PLAINTIFF
2 performed work for DEFENDANTS and at all times stood ready to perform, and did perform,
3 all the obligations to DEFENDANTS which PLAINTIFF undertook in the oral agreement.
4 However, DEFENDANTS breached the oral agreement by failing, neglecting, and refusing to
5 compensate PLAINTIFF in accordance with the oral agreement. As a direct and foreseeable
6 result of DEFENDANTS’ breach of the oral agreement, PLAINTIFF has suffered monetary
7 damages. The amount in controversy for PLAINTIFF individually does not exceed the sum or
8 value of \$75,000.

9 **CLASS ACTION ALLEGATIONS**

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

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

22 52. The members of the class are so numerous that joinder of all class members is
23 impractical.

24 53. Common questions of law and fact regarding DEFENDANTS’ conduct, including
25 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately
26 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
27 regular rate of compensation for missed meal and rest period premiums, failing to provide legally
28 compliant meal and rest periods, failure to reimburse for business expenses, failure to provide

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

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

1 54. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
2 a result of DEFENDANTS' conduct and actions alleged herein.

3 55. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
4 PLAINTIFF has the same interests as the other members of the class.

5 56. PLAINTIFF will fairly and adequately represent and protect the interests of the
6 CALIFORNIA CLASS Members.

7 57. PLAINTIFF retained able class counsel with extensive experience in class action
8 litigation.

9 58. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
10 interest of the other CALIFORNIA CLASS Members.

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

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

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

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

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

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

8 **FIRST CAUSE OF ACTION**

9 **Unlawful Business Practices**

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

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

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

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

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

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

28 66. By the conduct alleged herein, DEFENDANTS have engaged and continue to
engage in a business practice which violates California law, including but not limited to, the
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

1 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
2 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
3 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **SECOND CAUSE OF ACTION**

7 **Failure To Pay Minimum Wages**

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

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

10 77. 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 78. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
14 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
15 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate
16 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

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

1 83. DEFENDANTS' 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, DEFENDANTS
6 inaccurately calculated the correct time worked and consequently underpaid the actual time
7 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS 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 DEFENDANTS' 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 DEFENDANTS.

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 DEFENDANTS' 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. DEFENDANTS knew or should have known that PLAINTIFF and the other
23 members of the CALIFORNIA CLASS were under-compensated for their time worked.
24 DEFENDANTS 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 DEFENDANTS 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, DEFENDANTS 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 DEFENDANTS, 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, DEFENDANTS' 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. DEFENDANTS' 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
28 for DEFENDANTS' willful and intentional violations of the California Labor Code and the

1 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees
2 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
3 and/or 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 DEFENDANTS to work for DEFENDANTS and were not paid for all the time
15 they worked, including overtime work.

16 97. DEFENDANTS' 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, DEFENDANTS
24 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
25 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS 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 DEFENDANTS’ 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 DEFENDANTS.

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 brings this Action on behalf of himself and the CALIFORNIA CLASS based on
10 DEFENDANTS’ 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. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of
16 the 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 DEFENDANTS
20 failed to accurately record and pay as evidenced by DEFENDANTS’ business records and
21 witnessed by employees.

22 103. By virtue of DEFENDANTS’ 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. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were undercompensated for their time worked.

1 DEFENDANTS 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 DEFENDANTS perpetrated this systematic scheme by refusing to pay
4 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for
5 their 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, DEFENDANTS acted and continue 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 DEFENDANTS, 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, DEFENDANTS' 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. DEFENDANTS' 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.

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FOURTH CAUSE OF ACTION

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

107. 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.

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

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

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code § 226)**

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

10 115. 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.

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

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

1 employee identification number other than social security number may be shown
2 on the itemized statement,

- 3 h. the name and address of the legal entity that is the employer, and
- 4 i. all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee.

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

15 118. Further, from time to time, DEFENDANTS issued wage statements that included
16 items such as vacation pay, meal break penalties, sick pay and double-counted shift differential
17 payments into the calculation for total hours worked, in violation of Cal. Lab. Code § 226(a)(2).

18 119. In addition to the foregoing, DEFENDANTS failed to provide itemized wage
19 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
20 requirements of California Labor Code Section 226.

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

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

4 **SEVENTH CAUSE OF ACTION**

5 **Failure To Pay Wages When Due**

6 **(Cal. Lab. Code § 203)**

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

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

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

12 As used in this article:

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

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

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

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

29 125. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS
Members' employment contract.

30 126. Cal. Lab. Code § 203 provides:

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

6 127. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
7 terminated, and DEFENDANTS have not tendered payment of wages to these employees who
8 missed meal and rest breaks, as required by law.

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

14 **EIGHTH CAUSE OF ACTION**

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

16 **(Cal. Lab. Code §§ 2802)**

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

18 129. 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.

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

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

27 131. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
28 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 DEFENDANTS'
benefit. DEFENDANTS 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, personal computers and home internet, all on behalf of and for the benefit of

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

13 132. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
14 by him and the CALIFORNIA CLASS members in the discharge of their job duties for
15 DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the
16 statutory rate and costs under Cal. Lab. Code § 2802.

17 **NINTH CAUSE OF ACTION**

18 **UNPAID SICK PAY**

19 **(Cal. Lab. Code § 246, *et seq.*)**

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

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

24 134. Cal. Labor Code Sections 246(I)(1) mandates that “[p]aid sick time for nonexempt
25 employees shall be calculated in the same manner as the regular rate of pay for the workweek in
26 which the employee uses paid sick time, whether or not the employee actually works overtime in
27 that workweek.”

1 135. From time-to-time, during the PLAINTIFF and other members of the
2 CALIFORNIA CLASS were compensated at an hourly rate plus either non-discretionary incentive
3 pay. As a matter of law, the non-discretionary incentive compensation received by PLAINTIFF
4 and other members of the CALIFORNIA CLASS must be included in the “regular rate of pay.”

5 136. From time-to-time during the CLASS PERIOD, in those pay periods where
6 PLAINTIFF and other members of the CALIFORNIA CLASS earned hourly compensation and
7 either non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to
8 properly calculate the regular rate of pay for purposes of compensating paid sick time by omitting
9 non-discretionary incentive pay from the regular rate of pay.

10 137. DEFENDANT’s uniform policy and practice of omitting non-discretionary
11 incentive pay and/or piece-rate pay from the regular rate of pay for purposes of paying paid sick
12 pay, resulted in the underpayment of sick pay wages to PLAINTIFF and other members of the
13 CALIFORNIA CLASS. PLAINTIFF and other members of the CALIFORNIA CLASS therefore
14 request recovery of all unpaid wages, including sick pay wages, according to proof, interest,
15 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
16 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
17 overtime compensation is determined to be owed to other members of the CALIFORNIA CLASS
18 who have terminated their employment, DEFENDANT’s conduct also violates Labor Code §§
19 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
20 Cal. Lab. Code § 203, which penalties are sought herein on behalf of other members of the
21 CALIFORNIA CLASS. DEFENDANT’S conduct as alleged herein was willful, intentional and
22 not in good faith. Further, PLAINTIFF and other members of the CALIFORNIA CLASS are
23 entitled to seek and recover statutory costs.

24 138. Cal. Lab. Code § 246(i) provides that:

25 An employer shall provide an employee with written notice that sets forth the
26 amount of paid sick leave available, or paid time off leave an employer provides in
27 lieu of sick leave, for use on either the employee’s itemized wage statement
28 described in Section 226 or in a separate writing provided on the designated pay
date with the employee’s payment of wages. If an employer provides unlimited paid
sick leave or unlimited paid time off to an employee, the employer may satisfy this

1 section by indicating on the notice or the employee's itemized wage statement
2 "unlimited."

3 139. From time to time, DEFENDANT failed to furnish PLAINTIFF and other
4 members of the CALIFORNIA CLASS with written wage statements setting forth the amount of
5 paid sick leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.* As a result,
6 PLAINTIFF and other members of the CALIFORNIA CLASS are entitled to seek and recover
7 statutory costs.

8 **TENTH CAUSE OF ACTION**

9 **BREACH OF ORAL CONTRACT**

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

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

13 141. During PLAINTIFF's employment with DEFENDANTS, PLAINTIFF contracted with
14 DEFENDANTS, namely Matthew Miles who was employed by DEFENDANTS as a manager, which entitled
15 PLAINTIFF to earn an additional monthly commission of \$200 if PLAINTIFF met DEFENDANTS' sales
16 goals.

17 142. Pursuant to the oral agreement, PLAINTIFF performed work for DEFENDANTS
18 and at all times stood ready to perform, and did perform, all the obligations to DEFENDANTS
19 which PLAINTIFF undertook in the oral agreement.

20 143. However, DEFENDANTS breached the oral agreement by failing, neglecting, and
21 refusing to compensate PLAINTIFF in accordance with the oral agreement.

22 144. As a direct and foreseeable result of DEFENDANTS' breach of the oral agreement,
23 PLAINTIFF has suffered monetary damages.

24 **PRAYER FOR RELIEF**

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

27 1. On behalf of the CALIFORNIA CLASS:

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

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

2. On behalf of the CALIFORNIA CLASS:

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

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- 3. On behalf of PLAINTIFF for the Tenth cause of action:
 - a. Compensatory damages, according to proof at trial;
 - b. Special and General damages according to proof;
 - c. Statutory damages, penalties and attorney’s fees;
 - d. For loss of earnings (both past and future); and,
 - e. For interest at the legal rate in an amount according to proof.

- 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, § 246 and/or § 1194.

DATED: July, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay, Esq.
Attorney for PLAINTIFFS

DEMAND FOR A JURY TRIAL

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

DATED: July 6, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay, Esq.
Attorney for PLAINTIFFS