

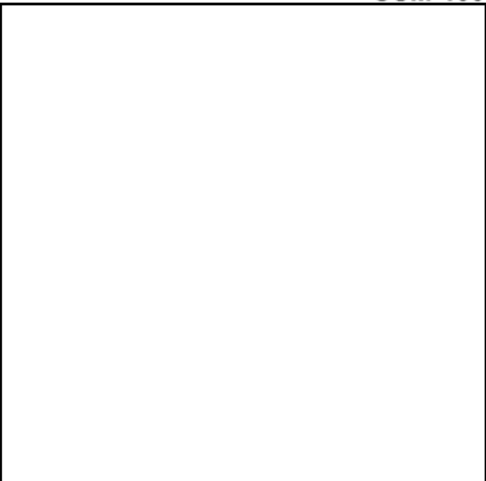
SUMMONS (CITACION JUDICIAL)

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

HENKEL US OPERATIONS CORPORATION, a Delaware corporation;
HENKEL OF AMERICA, INC., a Delaware corporation; HENKEL
CORPORATION, a Delaware corporation; and DOES 1-50, Inclusive,

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

DINO DE SANCTIS, an individual, on behalf of himself, and on behalf of
all persons similarly situated,



You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), 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 - Contra Costa - Wakefield Taylor Court
725 Court Street
Martinez, CA 94553

CASE NUMBER:
(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

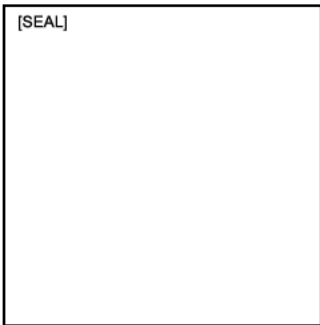
DATE: _____ Clerk, by _____, Deputy
(Fecha) (Secretario) (Adjunto)

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

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):



SUMMONS

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Attorneys for PLAINTIFF

SUMMONS ISSUED

Per local Rule, This case is assigned to Judge Treat, Charles S, for all purposes.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

DINO DE SANCTIS, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiff,

v.

HENKEL US OPERATIONS CORPORATION, a Delaware corporation; HENKEL OF AMERICA, INC., a Delaware corporation; HENKEL CORPORATION, a Delaware corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: C23-01799

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) FAILURE TO PAY VACATION WAGES DUE IN VIOLATION OF CAL. LAB. CODE 227.3.

DEMAND FOR A JURY TRIAL

PLAINTIFF DINO DE SANCTIS (“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 HENKEL US OPERATIONS CORPORATION (“Defendant Henkel US Operations”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant HENKEL OF AMERICA, INC. (“Defendant Henkel of America”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant HENKEL CORPORATION (“Defendant Henkel Corporation”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

4. Defendant Henkel US Operations, Defendant Henkel of America and Defendant Henkel Corporation were the joint employers of PLAINTIFF and the other members of the CALIFORNIA CLASS as evidenced by the documents issued to PLAINTIFF and the other members of the CALIFORNIA CLASS, by the company PLAINTIFF and the other members of the CALIFORNIA CLASS performed work for respectively, and as these entities each exerted control over the hours, wages and/or working conditions of PLAINTIFF and the other members

1 of the CALIFORNIA CLASS. Therefore, Defendant Henkel US Operations, Defendant Henkel
2 of America and Defendant Henkel Corporation are jointly responsible as employers for the
3 conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

4 5. DEFENDANT operates a consumer goods company throughout California,
5 including in the county of Contra Costa, where PLAINTIFF worked.

6 6. PLAINTIFF was employed by DEFENDANTS in California from November of
7 2022 to May of 2023 as a non-exempt employee, paid on an hourly basis, and entitled to the
8 legally required meal and rest periods and payment of minimum and overtime wages due for all
9 time worked.

10 7. 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 Henkel US Operations
12 and/or Defendant Henkel of America and/or Defendant Henkel Corporation in California and
13 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
14 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
15 by the Court (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of the
16 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

28 ///

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

10 10. The agents, servants and/or employees of the Defendants and each of them acting
11 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
12 agent, servant and/or employee of the Defendants, and personally participated in the conduct
13 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
14 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
15 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
16 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
17 Defendants' agents, servants and/or employees.

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

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

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

11 **A. Meal Period Violations**

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

26 19. From time to time during the CLASS PERIOD, as a result of their rigorous work
27 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
28 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty

1 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
2 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANTS for
3 more than five (5) hours during some shifts without receiving a meal break. Further,
4 DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
5 second off-duty meal period for some workdays in which these employees are required by
6 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by
7 PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and
8 narrowly construed “on-duty” meal period exception. When they were provided with meal
9 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
10 required to remain on duty and on call. DEFENDANTS’ failure to provide PLAINTIFF and the
11 CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
12 DEFENDANTS’ business records. As a result of their rigorous work schedules and
13 DEFENDANTS’ inadequate staffing, PLAINTIFF and other members of the CALIFORNIA
14 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
15 DEFENDANTS’ strict corporate policy and practice.

16 **B. Rest Period Violations**

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

1 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
2 proper rest periods by DEFENDANT and DEFENDANTS' managers.

3 **C. Unreimbursed Business Expenses**

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

15 22. In the course of their employment, DEFENDANTS required PLAINTIFF and
16 other CALIFORNIA CLASS Members to incur personal expenses for the maintenance of work
17 uniforms as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
18 CALIFORNIA CLASS Members were required to maintain their work uniforms in order to
19 perform work and work-related tasks for DEFENDANTS. However, DEFENDANTS
20 unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the
21 use of their maintenance of work uniforms. As a result, in the course of their employment with
22 DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members incurred
23 unreimbursed business expenses that included, but were not limited to, costs related to the
24 maintenance of work uniforms, all on behalf of and for the benefit of DEFENDANT.

25 **D. Wage Statement Violations**

26 23. California Labor Code Section 226 required an employer to furnish its employees
27 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
28 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,

1 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
2 name of the employee and only the last four digits of the employee's social security number or an
3 employee identification number other than a social security number, (8) the name and address of
4 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate by the employee.

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

14 25. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
15 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
16 Cal. Lab. Code § 226.

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

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

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

25 28. During the CLASS PERIOD, from time-to-time DEFENDANTS required
26 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
27 work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to
28 work while off-the-clock.

1 29. DEFENDANTS directed and directly benefited from the undercompensated off-
2 the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

3 30. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
4 assignments, and employment conditions of PLAINTIFF and the other members of the
5 CALIFORNIA CLASS.

6 31. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
7 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
8 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
9 wages earned and owed for all the work they performed.

10 32. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
11 exempt employees, subject to the requirements of the California Labor Code.

12 33. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
13 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
14 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
15 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
16 eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime
17 pay.

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

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

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

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

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

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

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

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

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

21 **G. Unlawful Deductions**

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

26 **H. Sick Pay Violations**

27 42. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after
28 July 1, 2015, works in California for the same employer for 30 or more days within a year from

1 the commencement of employment is entitled to paid sick days as specified in this section.”
2 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.
3 From time to time, DEFENDANT failed to have a policy or practice in place that provided
4 PLAINTIFF and other members of the CALIFORNIA CLASS with sick days and/or paid sick
5 leave.

6 43. California Labor Code Section 246(i) requires an employer to furnish its
7 employees with written wage statements setting forth the amount of paid sick leave available.
8 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
9 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
10 forth the amount of paid sick leave available.

11 **I. Timekeeping Manipulation**

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

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

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

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

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

9 **J. Unlawful Rounding Practices**

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

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

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

2 50. Pursuant to California Labor Code section 204, PLAINTIFF and the
3 CALIFORNIA CLASS members were entitled to timely payment of wages during their
4 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
5 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
6 meal period premium wages, and rest period premium wages within permissible time period.

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

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

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

1 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed
2 to reimburse PLAINTIFF for required business expenses related to the personal expenses
3 incurred for the maintenance of his work uniform, on behalf of and in furtherance of his
4 employment with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF
5 the minimum, overtime and double time compensation still owed to him or any penalty wages
6 owed to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF
7 individually does not exceed the sum or value of \$75,000.

8 **CLASS ACTION ALLEGATIONS**

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

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

21 56. The members of the class are so numerous that joinder of all class members is
22 impractical.

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

1 wage and overtime, exist as to all members of the class and predominate over any questions
2 affecting solely any individual members of the class. Among the questions of law and fact
3 common to the class are:

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

3 59. 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 60. PLAINTIFF will fairly and adequately represent and protect the interests of the
6 CALIFORNIA CLASS Members.

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

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

11 63. 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 64. 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 65. 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 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 71. 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 72. 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 73. 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 74. 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 75. 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 76. 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 77. 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 78. 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 79. 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 80. 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 81. 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 82. 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 83. 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 84. 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 85. 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 86. 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 87. 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 88. 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 89. 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 90. 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 91. 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 92. 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 93. 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 94. 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 95. 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 96. 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 97. 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 98. 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 99. 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.

13 100. 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.

16 101. 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.

23 102. 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.

1 103. 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.

4 104. 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.

12 105. 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.

15 106. 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.

22 107. 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.

27 108. 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.

6 109. 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.

14 110. 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)

111. 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.

112. 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.

113. 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.

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

4 **FIFTH CAUSE OF ACTION**

5 **Failure To Provide Required Rest Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

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

8 115. 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.

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

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

3 118. 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)**

10 119. 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.

13 120. 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
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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.

6 121. 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.

15 122. 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).

18 123. 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.

21 124. 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)**

8 125. 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.

11 126. 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.

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

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

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

26 129. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS
27 Members' employment contract.

28 130. 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.

6 131. 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.

9 132. 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)**

18 133. 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.

21 134. 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.

27 135. 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 maintenance of his work
uniform, all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and

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

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

15 **NINTH CAUSE OF ACTION**

16 **For Failure to Pay Vacation Wages**

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

18 137. 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.

21 138. At all relevant times, California Labor Code §227.3 provides for the following:
22 Unless otherwise provided by a collective-bargaining agreement, whenever a
23 contract of employment or employer policy provides for paid vacations, and an
24 employee is terminated without having taken off his vested vacation time, all
25 vested vacation shall be paid to him as wages at his final rate in accordance with
26 such contract of employment or employer policy respecting eligibility or time
27 served; provided, however, that an employment contract or employer policy shall
28 not provide for forfeiture of vested vacation time upon termination. The Labor
Commissioner or a designated representative, in the resolution of any dispute with
regard to vested vacation time, shall apply the principles of equity and fairness.

139. At all times relevant, including at times throughout the four-year period preceding
the filing of the original complaint, PLAINTIFF, and upon information and belief, and
CALIFORNIA CLASS Members were subject to an employer policy and/or contract of

1 employment that provided for paid vacations not otherwise provided by a collective-bargaining
2 agreement. Upon PLAINTIFF's and CALIFORNIA CLASS Members' separation of
3 employment, they had not used all of their vested vacation and thus their unused, vested vacation
4 was required to have been paid at their final rate upon separation of employment. As a result of
5 the failure to pay out the vested but unused vacation pay, DEFENDANTS violated Labor Code
6 §227.3. Further, DEFENDANTS from time to time subjected PLAINTIFF and CALIFORNIA
7 CLASS Members to forfeit their vested, but unused vacation time, in further violation of Cal.
8 Lab. Code § 227.3.

9 140. PLAINTIFF seeks, on her behalf and on behalf of the CALIFORNIA CLASS, all
10 damages and remedies available under California Labor Code §227.3, including payment of the
11 vacation wages at the final rate.

12 **PRAYER FOR RELIEF**

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

15 1. On behalf of the CALIFORNIA CLASS:

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

26 2. On behalf of the CALIFORNIA CLASS:

- 27 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
28 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action

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- 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 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 24, 2023

ZAKAY LAW GROUP, APLC

By:  _____

Shani O. Zakay, Esq.
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: July 24, 2023

ZAKAY LAW GROUP, APLC

By:  _____

Shani O. Zakay, Esq.
Attorney for PLAINTIFF