

**SUMMONS
(CITACION JUDICIAL)**

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

THE NEIGHBORHOOD HOUSE ASSOCIATION, a California corporation; and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

STEVE COOPER, an individual, on behalf of himself, and on behalf of all persons similarly situated,

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

11/22/2023 at 11:49:20 AM

Clerk of the Superior Court
By Pierce Jeffrey, Deputy Clerk

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court of California - Hall of Justice
330 West Broadway
San Diego, CA 92101

CASE NUMBER:

(Número del Caso): 37-2023-00051180-CU-OE-CTL

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

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

Jean-Claude Lapuyade, Esq. SBN:248676 Tel:(619) 599-8292 Fax: (619) 599-8291
JCL LAW FIRM, APC- 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 11/28/2023
(Fecha)

Clerk, by _____, Deputy
(Secretario) P. Jeffrey (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):



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JCL LAW FIRM, APC
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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

STEVE COOPER, an individual, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiffs,

v.

THE NEIGHBORHOOD HOUSE ASSOCIATION, a California corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: 37-2023-00051180-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;

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- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226.

5 **DEMAND FOR A JURY TRIAL**

6

7 PLAINTIFF STEVE COOPER (“PLAINTIFF”), an individual, on behalf of himself and all

8 other similarly situated current and former employees, allege on information and belief, except for

9 his own acts and knowledge which are based on personal knowledge, the following:

10 **PRELIMINARY ALLEGATIONS**

11 1. Defendant THE NEIGHBORHOOD HOUSE ASSOCIATION (“DEFENDANT”

12 and/or “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein

13 conducted and continues to conduct substantial and regular business throughout California.

14 2. DEFENDANT operates a multi-purpose human services agency throughout the

15 state of California, including the county of San Diego, where PLAINTIFF worked.

16 3. PLAINTIFF has been employed by DEFENDANT in California since 2012 as a

17 non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest

18 periods and payment of minimum and overtime wages due for all time worked.

19 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,

20 defined as all persons who are or previously were employed by DEFENDANT in California and

21 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period

22 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined

23 by the Court (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of the

24 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

25 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA

26 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during

27 the CLASS PERIOD caused by DEFENDANT’s uniform policy and practice which failed to

28 lawfully compensate these employees. DEFENDANT’s uniform policy and practice alleged

1 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained
2 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
3 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
4 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
5 other members of the CALIFORNIA CLASS who have been economically injured by
6 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
7 relief.

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

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

25 8. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of the
26 PLAINTIFF'S employer, within the meaning of California Labor Code § 558, who violated or
27 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
28 regulating hours and days of work in any order of the Industrial Welfare Commission and, as

1 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
2 at all relevant times.

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

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

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

16 **JURISDICTION AND VENUE**

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

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

25 **THE CONDUCT**

26 14. 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 the other members of the CALIFORNIA CLASS for missed meal and rest
3 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
4 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
5 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
6 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
7 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
8 Members for business expenses, and failed to issue to PLAINTIFF and the members of the
9 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
10 applicable hourly rates in effect during the pay periods and the corresponding amount of time
11 worked at each hourly rate and/or failing to adhere to Labor Code Section 226(a)(1)-(9).
12 DEFENDANT's uniform policies and practices are intended to purposefully avoid the accurate
13 and full payment for all time worked as required by California law which allows DEFENDANT
14 to illegally profit and gain an unfair advantage over competitors who comply with the law. To
15 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
16 DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

17 **A. Meal Period Violations**

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

1 overtime rates. DEFENDANT’s uniform policy and practice not to pay PLAINTIFF and other
2 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT’s business
3 records.

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

21 **B. Rest Period Violations**

22 17. From time to time during the CLASS PERIOD, PLAINTIFF and other
23 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
24 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
25 DEFENDANT’s inadequate staffing. Further, for the same reasons, these employees were denied
26 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
27 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
28 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and

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

8 **C. Unreimbursed Business Expenses**

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

20 19. In the course of their employment, DEFENDANT required PLAINTIFF and other
21 CALIFORNIA CLASS Members to use their personal cell phones and personal vehicles as a
22 result of and in furtherance of their job duties, including but not limited to receiving and/or
23 responding to work-related communications and performing work-related duties. However,
24 DEFENDANT unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
25 Members for the use of their personal cell phones and personal vehicles. As a result, in the course
26 of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS
27 Members incurred unreimbursed business expenses that included, but were not limited to, costs
28 related to the use of their personal cell phones and personal vehicles.

1 **D. Wage Statement Violations**

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

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

18 22. Further, DEFENDANT from time to time issued wage statements to PLAINTIFF
19 and the CALIFORNIA CLASS Members that included hours for items such as, but not limited
20 to, “Holiday” and “Vacation” hours into the computation for total hours worked. However,
21 “Holiday” and “Vacation” hours are not considered “hours worked.” As such, DEFENDANT
22 from time to time issued wage statements to PLAINTIFF and the CALIFORNIA CLASS
23 Members that violated Cal. Lab. Code § 226(a)(2).

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

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

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

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

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

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

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

13 28. DEFENDANT controlled the work schedules, duties, and protocols, applications,
14 assignments, and employment conditions of PLAINTIFF and the other members of the
15 CALIFORNIA CLASS.

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

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

22 31. DEFENDANT's policies and practices deprived PLAINTIFF and the other
23 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
24 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
25 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
26 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime
27 pay.

28

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

3 33. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
4 forfeited wages due to them for all hours worked at DEFENDANT’s direction, control, and
5 benefit for the time spent working while off-the-clock. DEFENDANT’s 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 DEFENDANT’s business
8 records.

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

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

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

24 36. The second component of PLAINTIFF’S and other CALIFORNIA CLASS
25 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
26 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
27 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
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1 paid on an hourly basis with bonus compensation when the employees met the various
2 performance goals set by DEFENDANTS.

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

21 38. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a
23 matter of company policy, practice, and procedure, intentionally and knowingly failed to
24 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
25 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
26 sick pay as required by California law which allowed DEFENDANT to illegally profit and gain
27 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
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1 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANT, the
2 CLASS PERIOD should be adjusted accordingly.

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

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

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

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

20 **H. Sick Pay Violations**

21 42. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after
22 July 1, 2015, works in California for the same employer for 30 or more days within a year from
23 the commencement of employment is entitled to paid sick days as specified in this section.”
24 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.
25 From time to time, DEFENDANT failed to have a policy or practice in place that provided
26 PLAINTIFF and other members of the CALIFORNIA CLASS with sick days and/or paid sick
27 leave.

28 43. California Labor Code Section 246(i) requires an employer to furnish its

1 employees with written wage statements setting forth the amount of paid sick leave available.
2 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
3 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
4 forth the amount of paid sick leave available.

5 **I. Unlawful Deductions**

6 44. DEFENDANT, from time-to-time unlawfully deducted wages from PLAINTIFF
7 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
8 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANT
9 violated Labor Code § 221.

10 **J. Timekeeping Manipulation**

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

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

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

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

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

9 **K. Unlawful Rounding Practices**

10 49. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
11 place an immutable timekeeping system to accurately record and pay PLAINTIFF 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 PLAINTIFF 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 PLAINTIFF 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, PLAINTIFF 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 50. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
23 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
24 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
25 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
26 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
27 off-duty meal break.

28 51. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take

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

18 **CLASS ACTION ALLEGATIONS**

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

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

3 54. The members of the class are so numerous that joinder of all class members is
4 impractical.

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

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

- 1 h. Whether DEFENDANT committed an act of unfair competition by systematically
- 2 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
- 3 CLASS for all time worked;
- 4 i. Whether DEFENDANT committed an act of unfair competition by systematically
- 5 failing to record all meal and rest breaks missed by PLAINTIFF and other
- 6 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
- 7 of this work, required employees to perform this work and permits or suffers to
- 8 permit this work;
- 9 j. Whether DEFENDANT committed an act of unfair competition in violation of the
- 10 UCL, by failing to provide the PLAINTIFF and the other members of the
- 11 CALIFORNIA CLASS with the legally required meal and rest periods.

12 56. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
13 a result of DEFENDANT’s conduct and actions alleged herein.

14 57. PLAINTIFF’S claims are typical of the claims of the CALIFORNIA CLASS, and
15 PLAINTIFF have the same interests as the other members of the class.

16 58. PLAINTIFF will fairly and adequately represent and protect the interests of the
17 CALIFORNIA CLASS Members.

18 59. PLAINTIFF retained able class counsel with extensive experience in class action
19 litigation.

20 60. Further, PLAINTIFF’S interests are coincident with, and not antagonistic to, the
21 interest of the other CALIFORNIA CLASS Members.

22 61. There is a strong community of interest among PLAINTIFF and the members of
23 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
24 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
25 sustained.

26 62. The questions of law and fact common to the CALIFORNIA CLASS Members
27 predominate over any questions affecting only individual members, including legal and factual
28 issues relating to liability and damages.

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

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

12 68. By the conduct alleged herein, DEFENDANT has engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
15 including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198,
16 and 2802, for which this Court should issue declaratory and other equitable relief pursuant to
17 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
18 constitute unfair competition, including restitution of wages wrongfully withheld.

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

24 70. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
25 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
26 mandated meal and rest periods and the required amount of compensation for missed meal and
27 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
28 necessary business expenses incurred, due to a systematic business practice that cannot be
justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should

1 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
2 restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

8 78. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
9 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
10 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
11 engaging in any unlawful and unfair business practices in the future.

12 79. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
13 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
14 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
15 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
16 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable
17 legal and economic harm unless DEFENDANT is restrained from continuing to engage in these
18 unlawful and unfair business practices.

19 **SECOND CAUSE OF ACTION**

20 **Failure To Pay Minimum Wages**

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

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

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

26 81. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
27 for DEFENDANT's willful and intentional violations of the California Labor Code and the
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1 Industrial Welfare Commission requirements for DEFENDANT’s failure to accurately calculate
2 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

5 83. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a less wage than
7 the minimum so fixed is unlawful.

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

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

15 86. DEFENDANT’s uniform pattern of unlawful wage and hour practices manifested,
16 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
17 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
18 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

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1 89. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
3 failure to pay all earned wages.

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

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

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

24 93. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
25 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
26 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
27 California Labor Code and/or other applicable statutes. To the extent minimum wage
28 compensation is determined to be owed to the CALIFORNIA CLASS Members who have

1 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
2 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
3 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
4 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
5 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
6 recover statutory costs.

7 **THIRD CAUSE OF ACTION**

8 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

24 98. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
25 including minimum and overtime compensation and interest thereon, together with the costs of
26 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
27 than those fixed by the Industrial Welfare Commission is unlawful.
28

1 99. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
2 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
3 they worked, including overtime work.

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

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

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

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

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1 104. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for overtime worked than they were entitled to,
3 constituting a failure to pay all earned wages.

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

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

16 107. DEFENDANT knew or should have known that PLAINTIFF and the other
17 members of the CALIFORNIA CLASS were undercompensated for their time worked.
18 DEFENDANT systematically elected, either through intentional malfeasance or gross
19 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
20 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
21 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages
22 for their overtime worked.

23 108. In performing the acts and practices herein alleged in violation of California labor
24 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
25 and provide them with the requisite compensation, DEFENDANT acted and continues to act
26 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
27 CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the
28 consequences to them, and with the despicable intent of depriving them of their property and

1 legal rights, and otherwise causing them injury in order to increase company profits at the
2 expense of these employees.

3 109. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
4 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
5 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
6 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
7 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
8 employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and
9 therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code §
10 203, which penalties are sought herein. DEFENDANT's conduct as alleged herein was willful,
11 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
12 Members are entitled to seek and recover statutory costs.

13 **FOURTH CAUSE OF ACTION**

14 **Failure To Provide Required Meal Periods**

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

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

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

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

1 DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF and
2 CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which
3 these employees were required by DEFENDANT to work ten (10) hours of work. As a result,
4 PLAINTIFF and other members of the CALIFORNIA CLASS forfeited meal breaks without
5 additional compensation and in accordance with DEFENDANT's strict corporate policy and
6 practice.

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

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

15 **FIFTH CAUSE OF ACTION**

16 **Failure To Provide Required Rest Periods**

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

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

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

22 115. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
23 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
24 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
25 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
26 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
27 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
28 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour

1 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other
2 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
3 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate
4 PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the
5 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
6 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
7 periods is evidenced by DEFENDANT's business records.

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

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

16 **SIXTH CAUSE OF ACTION**

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

18 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

120. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS

1 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
2 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
3 members for expenses which included, but were not limited to, their personal cell phones and
4 personal vehicles as a result of and in furtherance of their job duties, including but not limited to
5 receiving and/or responding to work-related communications and performing work-related
6 duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
7 DEFENDANTS to use their personal cell phones and personal vehicles to execute their essential
8 job duties on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure
9 was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses
10 resulting from using their personal cell phones and personal vehicles for DEFENDANT within
11 the course and scope of their employment for DEFENDANT. These expenses were necessary to
12 complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to
13 assert any waiver of this expectation. Although these expenses were necessary expenses incurred
14 by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANT failed to indemnify
15 and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an
16 employer is required to do under the laws and regulations of California.

17 121. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
18 by them and the CALIFORNIA CLASS members in the discharge of their job duties for
19 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the
20 statutory rate and costs under Cal. Lab. Code § 2802.

21 **SEVENTH CAUSE OF ACTION**

22 **Failure To Provide Accurate Itemized Statements**

23 **(Cal. Lab. Code § 226)**

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

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

28 123. Cal. Labor Code § 226 provides that an employer must furnish employees with an

1 “accurate itemized” statement in writing showing:

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

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

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

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

15 **EIGHTH CAUSE OF ACTION**

16 **Failure To Pay Wages When Due**

17 **(Cal. Lab. Code § 203)**

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

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

22 128. Cal. Lab. Code § 200 provides that:

23 As used in this article:

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

1 129. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges
2 an employee, the wages earned and unpaid at the time of discharge are due and payable
3 immediately.”

4 130. Cal. Lab. Code § 202 provides, in relevant part, that:
5 If an employee not having a written contract for a definite period quits his or her
6 employment, his or her wages shall become due and payable not later than 72 hours
7 thereafter, unless the employee has given 72 hours previous notice of his or her intention
8 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
9 Notwithstanding any other provision of law, an employee who quits without providing a
72-hour notice shall be entitled to receive payment by mail if he or she so requests and
designates a mailing address. The date of the mailing shall constitute the date of payment
for purposes of the requirement to provide payment within 72 hours of the notice of
quitting.

10 131. There was no definite term in PLAINTIFF’S or any CALIFORNIA CLASS
11 Members’ employment contract.

12 132. Cal. Lab. Code § 203 provides:
13 If an employer willfully fails to pay, without abatement or reduction, in accordance with
14 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
15 quits, the wages of the employee shall continue as a penalty from the due date thereof at
the same rate until paid or until an action therefor is commenced; but the wages shall not
continue for more than 30 days.

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

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

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1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

15 2. On behalf of the CALIFORNIA CLASS:

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
17 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
18 to Cal. Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for overtime compensation due to PLAINTIFF and the other members of
21 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
22 thereon at the statutory rate;
- 23 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
24 the applicable IWC Wage Order;
- 25 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
26 which a violation occurs and one hundred dollars (\$100) per each member of the
27 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
28 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for

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violation of Cal. Lab. Code § 226

e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

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

3. On all claims:

a. An award of interest, including prejudgment interest at the legal rate;

b. Such other and further relief as the Court deems just and equitable; and

c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: November 22, 2023

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: November 22, 2023

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade
Attorney for PLAINTIFF