

SUMMONS (CITACION JUDICIAL)

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

SOUTH BAY HYUNDAI, LLC, a California Limited Liability Company;
and DOES 1-50, Inclusive,

Electronically FILED by
Superior Court of California,
County of Los Angeles
12/27/2023 3:17 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Covarrubias, Deputy Clerk

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

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

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), 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 - Los Angeles - Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER:

(Número del Caso):

23STCV31602

David W. Slayton, Executive Officer/Clerk of Court

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: 12/27/2023

(Fecha)

Clerk, by J. Covarrubias, Deputy
(Secretario) (Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served

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

[SEAL]



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ZAKAY LAW GROUP, APLC

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

v.

SOUTH BAY HYUNDAI, LLC, a California Limited Liability Company; and DOES 1-50, Inclusive,

Defendants.

Case No: **23STCV31602**

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) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT LABOR CODE §§ 2698 *et seq.*

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

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

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

3. PLAINTIFF was employed by DEFENDANTS in California from September of 2022 to December of 2022 as a non-exempt employee, paid in part an hourly basis and non-discretionary bonuses, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

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

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

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

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

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

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

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

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

20 JURISDICTION AND VENUE

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

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

THE CONDUCT

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

22 **A. Meal Period Violations**

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

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

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

1 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
2 DEFENDANTS' strict corporate policy and practice.

3 **B. Rest Period Violations**

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

21 **C. Unreimbursed Business Expenses**

22 18. DEFENDANTS as a matter of corporate policy, practice, and procedure,
23 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
24 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
25 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
26 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
27 are required to indemnify employees for all expenses incurred in the course and scope of their
28 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or

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

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

16 **D. Wage Statement Violations**

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

25 21. From time to time during the CLASS PERIOD, when PLAINTIFF and other
26 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
27 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS
28 also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and

1 accurate wage statements which failed to show, among other things, all deductions, the total hours
2 worked and all applicable hourly rates in effect during the pay period and the corresponding
3 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
4 meal and rest periods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ///

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

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

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

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

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

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

23 39. Further, from time-to-time during the CLASS PERIOD, DEFENDANTS
24 improperly misclassified PLAINTIFF and the CALIFORNIA CLASS members who were paid
25 on a draw versus commission basis as exempt from overtime compensation. During the CLASS
26 PERIOD, DEFENDANTS included advanced draws in order to meet the salary-basis test for the
27 overtime exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet
28 the salary-basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-

1 254.) As a result, PLAINTIFF and the CALIFORNIA CLASS members who were paid on a draw
2 versus commission basis forfeited overtime wages by DEFENDANTS’ failure to accurately
3 classify them as non-exempt from overtime compensation.

4 **H. Unlawful Deductions**

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

9 **I. Timekeeping Manipulation**

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

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

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

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

7 **J. Unlawful Rounding Practices**

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

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

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

2 47. 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 48. 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 49. 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 **L. Sick Pay Violations**

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

26 51. California Labor Code Section 246(i) requires an employer to furnish its
27 employees with written wage statements setting forth the amount of paid sick leave available.
28 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish

1 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
2 forth the amount of paid sick leave available.

3 **M. Failure to Provide Personnel Files**

4 52. On June 20, 2023 and August 14, 2023, PLAINTIFF caused written requests via
5 certified mail to be delivered to DEFENDANTS for PLAINTIFF’S personnel and employment
6 records, including but not limited to: (1) payroll records; (2) employment contracts; (3) itemized
7 pay stubs; and (4) PLAINTIFF’S complete employment file.

8 53. DEFENDANTS failed to provide and/or make available to PLAINTIFF his
9 personnel records, payroll records, employment contract, and entire employment file within
10 thirty (30) days of his requests stated above. In fact, as of the date of filing of this complaint,
11 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
12 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide
13 PLAINTIFF with his employment file. Section 1198.5 states that employees (and former
14 employees) have the right to inspect personnel records maintained by the employer “related to
15 the employee’s performance or to any grievance concerning the employee.” Employers must
16 allow inspection or copying within thirty (30) days of the request. PLAINTIFF is now entitled
17 to and requests injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, a
18 statutory penalty, and an award of attorneys’ fees and costs for bringing this action.

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

1 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with
2 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed
3 to reimburse PLAINTIFF for required business expenses related to the personal expenses
4 incurred for the use of his personal cell phone and personal vehicle on behalf of and in
5 furtherance of his employment with DEFENDANTS. Additionally, DEFENDANTS failed to
6 provide and/or make available to PLAINTIFF his personnel records, payroll records,
7 employment contracts, and entire employment file within (30) days of all his requests on June
8 20, 2023 and August 14, 2023. To date, DEFENDANTS have not fully paid PLAINTIFF the
9 minimum, overtime and double time compensation still owed to him or any penalty wages owed
10 to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually
11 does not exceed the sum or value of \$75,000.

12 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

4 59. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
5 a result of DEFENDANTS' conduct and actions alleged herein.

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

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

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

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

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

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

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

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

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

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

11 **FIRST CAUSE OF ACTION**

12 **Unlawful Business Practices**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **SECOND CAUSE OF ACTION**

11 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

28

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

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

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

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

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

22 92. 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 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
25 suffered and will continue to suffer an economic injury in amounts which are presently unknown
26 to them, and which will be ascertained according to proof at trial.

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

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

6 94. 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 continues to act
9 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
10 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
11 consequences to them, and with the despicable intent of depriving them of their property and legal
12 rights, and otherwise causing them injury in order to increase company profits at the expense of
13 these employees.

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

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1 **THIRD CAUSE OF ACTION**

2 **Failure To Pay Overtime Compensation**

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

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

5 96. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
2 penalties are sought herein. DEFENDANTS' conduct as alleged herein was willful, intentional,
3 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are
4 entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

26 114. DEFENDANTS further violated California Labor Code §§ 226.7 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
28 Members who were not provided a meal period, in accordance with the applicable Wage Order,

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

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

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

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

10 116. 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.

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

27 118. DEFENDANTS further violated California Labor Code §§ 226.7 and the
28 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS

1 Members who were not provided a rest period, in accordance with the applicable Wage Order,
2 one additional hour of compensation at each employee's regular rate of pay for each workday that
3 rest period was not provided.

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

7 **SIXTH CAUSE OF ACTION**

8 **Failure To Provide Accurate Itemized Statements**

9 **(Cal. Lab. Code § 226)**

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

11 120. 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.

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

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

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.

6 122. 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.

15 123. 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).

18 124. 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.

21 125. 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)**

8 126. 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.

11 127. 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.

17 128. 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."

20 129. 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.

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

28 131. 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.

6 132. 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.

9 133. 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)**

18 134. 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.

21 135. 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.

27 136. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
28 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
members for required expenses incurred in the discharge of their job duties for DEFENDANTS'
benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
members for expenses which included, but were not limited to, the use of their personal cell
phones and personal vehicles, all on behalf of and for the benefit of DEFENDANTS.

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

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

16 **NINTH CAUSE OF ACTION**

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

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

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

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

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

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

4 140. PLAINTIFF, and such persons that may be added from time to time who satisfy
5 the requirements and exhaust the administrative procedures under the Private Attorney General
6 Act, bring this individual and Representative Action on behalf of the State of California with
7 respect to himself and all non-exempt employees who worked for DEFENDANT in California
8 during the time period of October 17, 2022 until the present (the “AGGRIEVED
9 EMPLOYEES”).

10 141. On October 17, 2023, PLAINTIFF gave written notice by certified mail to the
11 Labor and Workforce Development Agency (the “Agency”) and the employer of the specific
12 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
13 **Exhibit #1**, attached hereto and incorporated by this reference herein. The statutory waiting
14 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
15 pursuant to Section 2699.3, PLAINTIFF may now commence an individual and representative
16 civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with
17 respect to all AGGRIEVED EMPLOYEES as herein defined.

18 142. The policies, acts, and practices heretofore described were and are an unlawful
19 business act or practice because DEFENDANT (a) failed to pay PLAINTIFF and AGGRIEVED
20 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and
21 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to pay
22 PLAINTIFF and AGGRIEVED EMPLOYEES at the correct regular rate of pay, (d) failed to
23 pay PLAINTIFF and AGGRIEVED EMPLOYEES for all time worked, and (e) failed to timely
24 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
25 including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221,
26 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14,
27 1198, 1199, 2802, 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to
28 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil

1 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
2 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
3 the other AGGRIEVED EMPLOYEES.

4 **PRAYER FOR RELIEF**

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

7 1. On behalf of the CALIFORNIA CLASS:

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

18 2. On behalf of the CALIFORNIA CLASS:


- 19 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
20 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
21 to Cal. Code of Civ. Proc. § 382;
22 b. Compensatory damages, according to proof at trial, including compensatory
23 damages for overtime compensation due to PLAINTIFF and the other members of
24 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
25 thereon at the statutory rate;
26 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
27 the applicable IWC Wage Order;
28 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in

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

DATED: December 27, 2023

JCL LAW FIRM, APC
ZAKAY LAW GROUP, APLC

By: 
Monnett De La Torre, Esq.
Jean-Claude Lapuyade, Esq.
Shani O. Zakay, Esq.


Attorneys for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: December 27, 2023

JCL LAW FIRM, APC
ZAKAY LAW GROUP, APLC

By: 
Monnett De La Torre, Esq.
Jean-Claude Lapuyade, Esq.
Shani O. Zakay, Esq.

Attorneys for PLAINTIFF

EXHIBIT 1

October 17, 2023

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

SOUTH BAY HYUNDAI, LLC

c/o Newton Lim
20433 Hawthorne Blvd
Torrance, CA 90503

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0842 0061 20

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff AARON CASTRO (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant SOUTH BAY HYUNDAI, LLC (“Defendant”). Plaintiff was employed by Defendant from September of 2022 to December of 2022, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Plaintiff also worked at times for Defendant as a commission-based sales employee entitled to be separately compensated for his non-productive time, including rest periods. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages. Additionally, Defendant failed to separately pay Plaintiff and other aggrieved employees who worked for Defendant on a commission-based sales employee for all of their non-productive time, including for rest periods.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

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

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

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

Very truly yours,
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

v.

SOUTH BAY HYUNDAI, LLC, a California Limited Liability Company; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

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

DEMAND FOR A JURY TRIAL

PLAINTIFF AARON CASTRO (“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 SOUTH BAY HYUNDAI, LLC (“DEFENDANT” and/or “DEFENDANTS”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

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

3. PLAINTIFF was employed by DEFENDANTS in California from September of 2022 to December of 2022 as a non-exempt employee, paid in part an hourly basis and non-discretionary bonuses, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

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

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

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

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

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

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

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

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

20 **JURISDICTION AND VENUE**

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

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

THE CONDUCT

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

A. Meal Period Violations

15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the CLASS PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS’ control. Specifically,

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

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

1 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
2 DEFENDANTS' strict corporate policy and practice.

3 **B. Rest Period Violations**

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

21 **C. Unreimbursed Business Expenses**

22 18. DEFENDANTS as a matter of corporate policy, practice, and procedure,
23 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
24 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
25 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
26 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
27 are required to indemnify employees for all expenses incurred in the course and scope of their
28 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or

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

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

16 **D. Wage Statement Violations**

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

25 21. From time to time during the CLASS PERIOD, when PLAINTIFF and other
26 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
27 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS
28 also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and

1 accurate wage statements which failed to show, among other things, all deductions, the total hours
2 worked and all applicable hourly rates in effect during the pay period and the corresponding
3 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
4 meal and rest periods.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 33. From time to time during the CLASS PERIOD, DEFENDANTS failed and
20 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
21 Members for their overtime and double time hours worked, meal and rest period premiums, and
22 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
23 forfeited wages due to them for working overtime without compensation at the correct overtime
24 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
25 DEFENDANTS' uniform policy and practice not to pay the CALIFORNIA CLASS Members at
26 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick
27 pay in accordance with applicable law is evidenced by DEFENDANTS' business records.
28

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

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

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

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

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

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

23 39. Further, from time-to-time during the CLASS PERIOD, DEFENDANTS
24 improperly misclassified PLAINTIFF and the CALIFORNIA CLASS members who were paid
25 on a draw versus commission basis as exempt from overtime compensation. During the CLASS
26 PERIOD, DEFENDANTS included advanced draws in order to meet the salary-basis test for the
27 overtime exemption. However, DEFENDANTS cannot rely on advanced draws in order to meet
28 the salary-basis test for such an exemption. (See *Semprini v. Wedbush* (2020) 57 Cal.App.5th 252-

1 254.) As a result, PLAINTIFF and the CALIFORNIA CLASS members who were paid on a draw
2 versus commission basis forfeited overtime wages by DEFENDANTS’ failure to accurately
3 classify them as non-exempt from overtime compensation.

4 **H. Unlawful Deductions**

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

9 **I. Timekeeping Manipulation**

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

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

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

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

7 **J. Unlawful Rounding Practices**

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

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

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

27 47. Pursuant to California Labor Code section 204, PLAINTIFF and the
28 CALIFORNIA CLASS members were entitled to timely payment of wages during their

1 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
2 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
3 meal period premium wages, and rest period premium wages within permissible time period.

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

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

15 **L. Sick Pay Violations**

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

23 51. California Labor Code Section 246(i) requires an employer to furnish its
24 employees with written wage statements setting forth the amount of paid sick leave available.
25 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
26 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
27 forth the amount of paid sick leave available.

28 ///

1 **M. Failure to Provide Personnel Files**

2 52. On June 20, 2023 and August 14, 2023, PLAINTIFF caused written requests via
3 certified mail to be delivered to DEFENDANTS for PLAINTIFF’S personnel and employment
4 records, including but not limited to: (1) payroll records; (2) employment contracts; (3) itemized
5 pay stubs; and (4) PLAINTIFF’S complete employment file.

6 53. DEFENDANTS failed to provide and/or make available to PLAINTIFF his
7 personnel records, payroll records, employment contract, and entire employment file within
8 thirty (30) days of his requests stated above. In fact, as of the date of filing of this complaint,
9 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
10 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide
11 PLAINTIFF with his employment file. Section 1198.5 states that employees (and former
12 employees) have the right to inspect personnel records maintained by the employer “related to
13 the employee’s performance or to any grievance concerning the employee.” Employers must
14 allow inspection or copying within thirty (30) days of the request. PLAINTIFF is now entitled
15 to and requests injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, a
16 statutory penalty, and an award of attorneys’ fees and costs for bringing this action.

17 54. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
18 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
19 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
20 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
21 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
22 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided
23 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the
24 rest break. DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during
25 what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and
26 rest breaks without additional compensation and in accordance with DEFENDANTS’ strict
27 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with
28 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed

1 to reimburse PLAINTIFF for required business expenses related to the personal expenses
2 incurred for the use of his personal cell phone and personal vehicle on behalf of and in
3 furtherance of his employment with DEFENDANTS. Additionally, DEFENDANTS failed to
4 provide and/or make available to PLAINTIFF his personnel records, payroll records,
5 employment contracts, and entire employment file within (30) days of all his requests on June
6 20, 2023 and August 14, 2023. To date, DEFENDANTS have not fully paid PLAINTIFF the
7 minimum, overtime and double time compensation still owed to him or any penalty wages owed
8 to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually
9 does not exceed the sum or value of \$75,000.

10 CLASS ACTION ALLEGATIONS

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

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

23 57. The members of the class are so numerous that joinder of all class members is
24 impractical.

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

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

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

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

4 59. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
5 a result of DEFENDANTS' conduct and actions alleged herein.

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

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

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

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

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

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

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

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

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

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

11 **FIRST CAUSE OF ACTION**

12 **Unlawful Business Practices**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **SECOND CAUSE OF ACTION**

11 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

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

22 92. 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 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
25 suffered and will continue to suffer an economic injury in amounts which are presently unknown
26 to them, and which will be ascertained according to proof at trial.

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

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

6 94. 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 continues to act
9 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
10 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
11 consequences to them, and with the despicable intent of depriving them of their property and legal
12 rights, and otherwise causing them injury in order to increase company profits at the expense of
13 these employees.

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

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1 **THIRD CAUSE OF ACTION**

2 **Failure To Pay Overtime Compensation**

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

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

5 96. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
2 penalties are sought herein. DEFENDANTS' conduct as alleged herein was willful, intentional,
3 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are
4 entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

26 114. DEFENDANTS further violated California Labor Code §§ 226.7 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
28 Members who were not provided a meal period, in accordance with the applicable Wage Order,

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

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

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

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

10 116. 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.

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

27 118. DEFENDANTS further violated California Labor Code §§ 226.7 and the
28 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS

1 Members who were not provided a rest period, in accordance with the applicable Wage Order,
2 one additional hour of compensation at each employee's regular rate of pay for each workday that
3 rest period was not provided.

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

7 **SIXTH CAUSE OF ACTION**

8 **Failure To Provide Accurate Itemized Statements**

9 **(Cal. Lab. Code § 226)**

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

11 120. 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.

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

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

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.

6 122. 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.

15 123. 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).

18 124. 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.

21 125. 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)**

8 126. 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.

11 127. 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.

17 128. 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."

20 129. 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.

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

28 131. 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.

6 132. 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.

9 133. 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)**

18 134. 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.

21 135. 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.

27 136. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
28 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
members for required expenses incurred in the discharge of their job duties for DEFENDANTS'
benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
members for expenses which included, but were not limited to, the use of their personal cell
phones and personal vehicles, all on behalf of and for the benefit of DEFENDANTS.

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

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

16 **PRAYER FOR RELIEF**

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

19 1. On behalf of the CALIFORNIA CLASS:

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

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PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

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

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3. On 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: October 17, 2023

ZAKAY LAW GROUP, APLC


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

DEMAND FOR A JURY TRIAL

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

DATED: October 17, 2023

ZAKAY LAW GROUP, APLC

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

EXHIBIT