

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

TRILLIUM PUMPS USA, INC., a Delaware Corporation; and DOES
1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

MANUEL VILLA, an individual(s), 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):

Fresno Superior Courthouse - Civil Unlimited Division
1130 O Street
Fresno, CA 93724-0002

CASE NUMBER: **22CECG01104**
(Número del Caso):

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291

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

DATE: **4/12/2022**

(Fecha)

Clerk, by **E. Meyer**, 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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Superior Court of California
County of Fresno
By: E. Meyer, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

MANUEL VILLA, an individual(s), on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

TRILLIUM PUMPS USA, INC., a Delaware
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: **22CECG01104**

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;

- 1 6) FAILURE TO PROVIDE ACCURATE
2 ITEMIZED STATEMENTS IN
3 VIOLATION OF CAL. LAB. CODE § 226;
4 7) FAILURE TO PROVIDE WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203;
7 8) FAILURE TO REIMBURSE
8 EMPLOYEES FOR REQUIRED
9 EXPENSES IN VIOLATION OF
10 CALIFORNIA LABOR CODE §2802; and
11 9) UNLAWFUL DEDUCTIONS;
12 10) VIOLATION OF THE PRIVATE
13 ATTORNEYS GENERAL ACT [LABOR
14 CODE §§ 2698 ET SEQ.]

15 **DEMAND FOR A JURY TRIAL**

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

19 **THE PARTIES**

20 1. Defendant TRILLIUM PUMPS USA, INC. (“DEFENDANT”) is a California
21 corporation that at all relevant times mentioned herein conducted and continues to conduct
22 substantial and regular business in the state of California, county of Fresno.

23 2. DEFENDANT is a company that designs, manufactures, sells, and services highly
24 engineered valves, pumps, and actuators for use in the power, oil and gas, general industry, and
25 water and wastewater sectors in the State of California, including Fresno County, where
26 PLAINTIFF worked.

27 3. The true names and capacities, whether individual, corporate, subsidiary,
28 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the
true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter
collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one

1 or more of the events and happenings that proximately caused the injuries and damages
2 hereinafter alleged.

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

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

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

21 7. PLAINTIFF was employed by DEFENDANT in California from November of
22 2020 to August of 2021 and was at all times classified by DEFENDANT as a non-exempt
23 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
24 payment of minimum and overtime wages due for all time worked.

25 8. PLAINTIFF brings this Class Action on behalf of himself and a California class,
26 defined as all persons who are or previously were employed by DEFENDANT in California and
27 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
28 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined

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

3 9. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
4 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
5 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
6 lawfully compensate these employees.

7 10. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
8 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain
9 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

15 **JURISDICTION AND VENUE**

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

20 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
21 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
22 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
23 in this County and/or conducts substantial business in this County, and (ii) committed the
24 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

25 **THE CONDUCT**

26 14. In violation of the applicable sections of the California Labor Code and the
27 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
28 matter of company policy, practice and procedure, intentionally, knowingly and systematically
failed to provide legally compliant meal and rest periods, failed to accurately compensate

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

13 **A. Meal Period Violations**

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

1 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
2 time worked is evidenced by DEFENDANTS' business records.

3 16. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
4 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
5 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
6 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
7 other CALIFORNIA CLASS Members were required from time to time to perform work as
8 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
9 meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
10 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
11 these employees were required by DEFENDANTS to work ten (10) hours of work from time to
12 time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS
13 Members does not qualify for limited and narrowly construed "on-duty" meal period exception.
14 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS
15 Members were, from time to time, required to remain on duty, and on call. Further, from time to
16 time, PLAINTIFF and other CALIFORNIA CLASS Members were required to remain on duty,
17 on call, and/or on the premises, and/or to carry cordless communication devices and respond to
18 communications received on said devices during what was supposed to be their off-duty meal
19 periods. PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks
20 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
21 and practice.

22 **B. Rest Period Violations**

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

(10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. Further, from time to time, PLAINTIFF and other CALIFORNIA CLASS Members were required to remain on duty, on call, and/or on the premises, and/or to carry cordless communication devices and respond to communications received on said devices during what was supposed to be their off-duty rest periods. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

C. Unlawful Rounding Violations

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

19. Further, the mutability of DEFENDANTS' timekeeping system and unlawful rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding

1 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
2 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
3 off-duty meal break. Additionally, DEFENDANTS' unlawful rounding policy and practice
4 caused PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by
5 DEFENDANTS for more than ten (10) hours during a shift without receiving a second off-duty
6 meal break.

7 **D. Unreimbursed Business Expenses**

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

19 21. In the course of their employment, DEFENDANTS required PLAINTIFF and
20 other CALIFORNIA CLASS Members to use their personal cell phone to correspond and
21 coordinate tasks with their supervisor and/or other employees as a result of and in furtherance of
22 their job duties as employees for DEFENDANT. But for the use of their own personal cell phones,
23 PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential job
24 duties, including but not limited to sending and receiving work-related communications from
25 DEFENDANTS. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and
26 other CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in
27 the course of their employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA
28

1 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related
2 to the use of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

3 **E. Wage Statement Violations**

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

12 23. From time to time during the CLASS PERIOD, when PLAINTIFF and other
13 CALIFORNIA CLASS Members missed meal and rest breaks, or were not paid for all hours
14 worked, DEFENDANTS failed to provide PLAINTIFF and other CALIFORNIA CLASS
15 Members with complete and accurate wage statements that include, among other things, the total
16 hours worked, all applicable hourly rates in effect during the pay period, and the corresponding
17 amount of time worked at each hourly rate.

18 24. In addition to the violations described above, DEFENDANTS, from time to time,
19 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
20 that comply with Cal. Lab. Code § 226.

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

25 **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

26 26. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
27 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
28 CLASS for all hours worked.

1 27. During the CLASS PERIOD, from time-to-time DEFENDANTS required
2 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work pre-shift, post-
3 shift, and during a scheduled meal break while off the clock. This resulted in PLAINTIFF and
4 other members of the CALIFORNIA CLASS having to work while off-the-clock.

5 28. DEFENDANTS directed and directly benefited from the uncompensated off-the-
6 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

7 29. DEFENDANTS controlled the work schedules, duties, protocols, applications,
8 assignments, and employment conditions of PLAINTIFF and the other members of the
9 CALIFORNIA CLASS.

10 30. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
11 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
12 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
13 wages earned and owed for all the work they performed, including pre-shift, post-shift, and during
14 meal period off-the-clock work.

15 31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
16 exempt employees, subject to the requirements of the California Labor Code.

17 32. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
18 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
19 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
20 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
21 hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

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

24 34. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
25 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
26 for the time spent performing work before and after shifts, receiving and responding to work-
27 related communications on personal cell phones outside of their scheduled shifts and working
28 while clocked out for meal periods. DEFENDANTS' uniform policy and practice to not pay

1 PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in
2 accordance with applicable law is evidenced by DEFENDANTS' business records.

3 **G. Regular Rate Violation- Overtime, Double Time, Meal and Rest Period Premiums, and**
4 **Sick Pay**

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

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

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

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

1 rather than just all non-overtime hours worked. As a matter of law, the compensation received
2 by PLAINTIFF and other CALIFORNIA CLASS members must be included in the “regular rate
3 of pay.” The failure to do so has resulted in a systematic underpayment of overtime and double
4 time compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other
5 CALIFORNIA CLASS members by DEFENDANTS. Specifically, California Labor Code
6 Section 246 mandates that paid sick time for non-employees shall be calculated in the same
7 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid
8 sick time, whether or not the employee actually works overtime in that workweek.
9 DEFENDANTS’ conduct, as articulated herein, by failing to include the incentive compensation
10 as part of the “regular rate of pay” for purposes of overtime, double time, paid meal and rest period
11 premium payments, and/or paid sick pay compensation was in violation of Cal. Lab. Code § 246
12 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or
13 204.

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

25 **H. Unlawful Deductions**

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

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

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

20 **I. CLASS ACTION ALLEGATIONS**

21 42. PLAINTIFF brings the First through Ninth Causes of Action as a class action
22 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current
23 and former non-exempt California employees ("CALIFORNIA CLASS") during the period
24 beginning four years prior to the filing of the Complaint and ending on a date determined by the
25 Court ("CLASS PERIOD").

26 43. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
27 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
28 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,

1 illegal meal and rest period policies, failure to reimburse for business expenses, failure to
2 compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure
3 to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and
4 expenses.

5 44. The members of the class are so numerous that joinder of all class members is
6 impractical.

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

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

- 1 i. Whether DEFENDANTS committed an act of unfair competition by
2 systematically failing to record and pay PLAINTIFF and the other members of the
3 CALIFORNIA CLASS for all time worked;
- 4 j. Whether DEFENDANTS committed an act of unfair competition by
5 systematically failing to record all meal and rest breaks missed by PLAINTIFF
6 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed
7 the benefit of this work, required employees to perform this work and permits or
8 suffers to permit this work;
- 9 k. Whether DEFENDANTS committed an act of unfair competition in violation of
10 the UCL, by failing to provide the PLAINTIFF and the other members of the
11 CALIFORNIA CLASS with the legally required meal and rest periods.
- 12 46. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
13 a result of DEFENDANTS' conduct and actions alleged herein.
- 14 47. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
15 the same interests as the other members of the class.
- 16 48. PLAINTIFF will fairly and adequately represent and protect the interests of the
17 CALIFORNIA CLASS Members.
- 18 49. PLAINTIFF retained able class counsel with extensive experience in class action
19 litigation.
- 20 50. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
21 interests of the other CALIFORNIA CLASS Members.
- 22 51. There is a strong community of interest among PLAINTIFF and the members of
23 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
24 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
25 sustained.
- 26 52. The questions of law and fact common to the CALIFORNIA CLASS Members
27 predominate over any questions affecting only individual members, including legal and factual
28 issues relating to liability and damages.

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

- a. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- b. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

54. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS.

FIRST CAUSE OF ACTION

Unlawful Business Practices

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

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

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

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

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

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

10 58. By the conduct alleged herein, DEFENDANT has engaged and continues to
11 engage in a business practice which violates California law, including but not limited to, the
12 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
13 including Sections 201, 202, 203, 204, 221, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
14 1198, 2802, for which this Court should issue declaratory and other equitable relief pursuant to
15 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
16 constitute unfair competition, including restitution of wages wrongfully withheld.

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

22 60. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
23 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
24 mandated meal and rest periods and the required amount of compensation for missed meal and
25 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
26 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
27 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
28 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

23 66. All the acts described herein as violations of, among other things, the Industrial
24 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
25 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
26 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
27 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*
28

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

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

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

17 **SECOND CAUSE OF ACTION**

18 **Failure To Pay Minimum Wages**

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

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

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

24 71. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
25 for DEFENDANT’S willful and intentional violations of the California Labor Code and the
26 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate
27 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

3 73. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
5 the minimum so fixed is unlawful.

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

8 75. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
9 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
10 worked. As set forth herein, DEFENDANT'S uniform policy and practice was to unlawfully and
11 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
12 CALIFORNIA CLASS.

13 76. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
15 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
16 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

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

23 78. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
24 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
25 minimum wage compensation for their time worked for DEFENDANT.

26 79. During the CLASS PERIOD, PLAINTIFF and the other members of the
27 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
28 failure to pay all earned wages.

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

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

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

21 83. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
22 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
23 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
24 California Labor Code and/or other applicable statutes. To the extent minimum wage
25 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
26 terminated their employment, DEFENDANT’S conduct also violates Labor Code §§ 201 and/or
27 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
28 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS

1 Members. DEFENDANT’S conduct as alleged herein was willful, intentional and not in good
2 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
3 recover statutory costs.

4 **THIRD CAUSE OF ACTION**

5 **Failure To Pay Overtime Compensation**

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

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

8 84. 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 85. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
12 for DEFENDANT’s willful and intentional violations of the California Labor Code and the
13 Industrial Welfare Commission requirements for DEFENDANT’s failure to pay these employees
14 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
15 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

26 89. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
27 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
28 they worked, including overtime work.

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

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

14 92. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
15 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
16 compensation for overtime worked.

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

25 94. During the CLASS PERIOD, PLAINTIFF and the other members of the
26 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
27 constituting a failure to pay all earned wages.
28

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

7 96. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
8 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all
9 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
10 CLASS have suffered and will continue to suffer an economic injury in amounts which are
11 presently unknown to them, and which will be ascertained according to proof at trial.

12 97. DEFENDANTS knew or should have known that PLAINTIFF and the other
13 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
14 DEFENDANT systematically elected, either through intentional malfeasance or gross
15 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
16 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

26 99. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
27 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
28 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a

1 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
2 minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS
3 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
4 Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time
5 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
6 CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful,
7 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
8 Members are entitled to seek and recover statutory costs.

9 **FOURTH CAUSE OF ACTION**

10 **Failure To Provide Required Meal Periods**

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

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

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

16 101. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
17 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
18 required by the applicable Wage Order and Labor Code. The nature of the work performed by
19 PLAINTIFF and CALIFORNIA CLASS MEMBERS did not prevent these employees from being
20 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
21 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
22 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
23 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
24 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
25 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
26 Members with a second off-duty meal period in some workdays in which these employees were
27 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
28

1 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
2 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

11 **FIFTH CAUSE OF ACTION**

12 **Failure To Provide Required Rest Periods**

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

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

15 104. 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.

18 105. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
19 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
20 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
21 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
22 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
23 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
24 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
25 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
26 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
27 DEFENDANT and DEFENDANT's managers. As a result, DEFENDANT's failure to provide
28

1 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
2 periods is evidenced by DEFENDANT's business records.

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

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

11 **SIXTH CAUSE OF ACTION**

12 **Failure To Provide Accurate Itemized Statements**

13 **(Cal. Lab. Code §§ 226)**

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

15 108. 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.

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

- 20 a. Gross wages earned,
- 21 b. (2) total hours worked by the employee, except for any employee whose
22 compensation is solely based on a salary and who is exempt from payment
23 of overtime under subdivision (a) of Section 515 or any applicable order of
24 the Industrial Welfare Commission,
- 25 c. the number of piece-rate units earned and any applicable piece rate if the employee
26 is paid on a piece-rate basis,
- 27 d. all deductions, provided that all deductions made on written orders of the employee
28 may be aggregated and shown as one item,

- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

110. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods. Further, from time to time, DEFENDANTS failed to issue wage statements that provided the accurate name and address of the legal entity that is the employer of PLAINTIFF and other CALIFORNIA CLASS Members.

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

112. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover

1 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
2 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
3 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
4 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
5 of the CALIFORNIA CLASS herein).

6 **SEVENTH CAUSE OF ACTION**

7 **Failure To Pay Wages When Due**

8 **(Cal. Lab. Code §§ 203)**

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

10 113. 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.

13 114. Cal. Lab. Code § 200 provides that:

14 As used in this article:

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

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

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

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

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

118. Cal. Lab. Code § 203 provides:

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

119. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated, and DEFENDANT has not tendered payment of wages to these employees who were underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as required by law.

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

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees For Required Expenses

(Cal. Lab. Code §§ 2802)

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

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

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

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

123. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for

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

15 124. PLAINTIFF therefore demands reimbursement on behalf of the members of the
16 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
17 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with
18 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

19 **NINTH CAUSE OF ACTION**

20 **Unlawful Deductions from PLAINTIFF and CLASS MEMBERS Paychecks**

21 **[Cal. Labor Code §§ 221 and 223]**

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

23 125. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
24 the allegations in the preceding paragraphs.

25 126. During the CLASS PERIOD, DEFENDANT regularly and consistently
26 maintained corporate policies and procedures designed to reduce labor costs by reducing or
27 minimizing the amount of compensation paid to its employees, including but not limited to,
28 overtime compensation.

1 127. DEFENDANT made deductions from PLAINTIFF and members of the
2 CALIFORNIA CLASS' paychecks for unspecified reasons.

3 128. Labor Code § 221 provides it is unlawful for any employer to collect or receive
4 from an employee any part of wages theretofore paid by employer to employee.

5 129. Labor Code § 223 provides that where any statute or contract requires an employer
6 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
7 purporting to pay the wage designated by statute or by contract. Labor Code section 225 further
8 provides that the violation of any provision of Labor Code §§ 221 and 223 is a misdemeanor.

9 130. As a result of the conduct alleged above, DEFENDANTS unlawfully collected or
10 received from PLAINTIFF and the members of the CALIFORNIA CLASS' part of the wages
11 paid to their employees.

12 131. Wherefore, PLAINTIFF and the members of the CALIFORNIA CLASS demand
13 the return of all wages unlawfully deducted from the paychecks, including interest thereon,
14 penalties, reasonable attorneys' fees, and costs of suit pursuant to Labor Code §§ 225.5 and 1194.

15 **TENTH CAUSE OF ACTION**

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

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

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

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

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

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

3 134. PLAINTIFF, and such persons that may be added from time to time who satisfy the
4 requirements and exhaust the administrative procedures under the Private Attorney General Act,
5 bring this Representative Action on behalf of the State of California with respect to themselves and
6 all individuals who are or previously were employed by DEFENDANT and classified as non-
7 exempt employees in California during the time period of February 2, 2021 until the present (the
8 "AGGRIEVED EMPLOYEES").

9 135. On February 2, 2022, PLAINTIFF gave written notice by certified mail to the Labor
10 and Workforce Development Agency (the "Agency") and the employer of the specific
11 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
12 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period
13 for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section
14 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to Section
15 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as
16 herein defined.

17 136. The policies, acts and practices heretofore described were and are an unlawful
18 business act or practice because DEFENDANTS (a) failed to properly record and pay PLAINTIFF
19 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime
20 hours in violation of the Wage Order, (b) failed to provide accurate itemized wage statements, (c)
21 failed to provide mandatory meal breaks and rest breaks, (d) failed to pay meal and rest break
22 premiums, (e) failed to timely pay wages at the correct rate, and (f) engaged in unlawful deductions,
23 all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but
24 not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3,
25 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804,
26 and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result
27 of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
28 Code Private Attorney General Act of 2004 as the representative of the State of California for the
illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

15 2. On behalf of the CALIFORNIA CLASS:

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

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.

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

4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: April 11, 2022

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade

Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: April 11, 2022

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade

Attorney for PLAINTIFF

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #45701

February 2, 2022

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

TRILLIUM PUMPS USA, INC

c/o CT Corporation System
330 N. Brand Blvd., Ste 700
Glendale, CA 91203

Sent Via Certified Mail & Receipt No. 7021 2720 0000 9972 5672

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, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and 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 MANUEL VILLA (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant TRILLIUM PUMPS USA, INC. (“Defendant”). Plaintiff was employed by Defendant in California from November of 2020 to August of 2021 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 and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

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

A true and correct copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) 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 Act of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

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Attorneys for Plaintiff MANUEL VILLA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

MANUEL VILLA, an individual(s), on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

TRILLIUM PUMPS USA, INC., a Delaware
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

- 6) FAILURE TO 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
CALIFORNIA LABOR CODE §2802; and
9) UNLAWFUL DEDUCTIONS

DEMAND FOR A JURY TRIAL

Plaintiff MANUEL VILLA (“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:

THE PARTIES

1. Defendant TRILLIUM PUMPS USA, INC. (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Fresno.

2. DEFENDANT is a company that designs, manufactures, sells, and services highly engineered valves, pumps, and actuators for use in the power, oil and gas, general industry, and water and wastewater sectors in the State of California, including Fresno County, where PLAINTIFF worked.

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

1 4. The agents, servants, and/or employees of the Defendants and each of them acting
2 on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as
3 the agent, servant and/or employee of the Defendants, and personally participated in the conduct
4 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
5 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
6 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
7 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
8 Defendants' agents, servants and/or employees.

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

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

20 7. PLAINTIFF was employed by DEFENDANT in California from November of
21 2020 to August of 2021 and was at all times classified by DEFENDANT as a non-exempt
22 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
23 payment of minimum and overtime wages due for all time worked.

24 8. PLAINTIFF brings this Class Action on behalf of himself and a California class,
25 defined as all persons who are or previously were employed by DEFENDANT in California and
26 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
27 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
28 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 9. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
3 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
4 lawfully compensate these employees.

5 10. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
6 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain
7 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

8 11. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
9 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
10 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
11 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and
12 equitable relief.

13 **JURISDICTION AND VENUE**

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

18 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
19 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
20 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
21 in this County and/or conducts substantial business in this County, and (ii) committed the
22 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

23 **THE CONDUCT**

24 14. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
26 matter of company policy, practice and procedure, intentionally, knowingly and systematically
27 failed to provide legally compliant meal and rest periods, failed to accurately compensate
28 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all

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

11 **A. Meal Period Violations**

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

1 16. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
2 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
3 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
4 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
5 other CALIFORNIA CLASS Members were required from time to time to perform work as
6 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
7 meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
8 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
9 these employees were required by DEFENDANTS to work ten (10) hours of work from time to
10 time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS
11 Members does not qualify for limited and narrowly construed "on-duty" meal period exception.
12 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS
13 Members were, from time to time, required to remain on duty, and on call. Further, from time to
14 time, PLAINTIFF and other CALIFORNIA CLASS Members were required to remain on duty,
15 on call, and/or on the premises, and/or to carry cordless communication devices and respond to
16 communications received on said devices during what was supposed to be their off-duty meal
17 periods. PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks
18 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
19 and practice.

20 **B. Rest Period Violations**

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

1 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
2 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or
3 on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
4 hour wages *in lieu* thereof. Further, from time to time, PLAINTIFF and other CALIFORNIA
5 CLASS Members were required to remain on duty, on call, and/or on the premises, and/or to carry
6 cordless communication devices and respond to communications received on said devices during
7 what was supposed to be their off-duty rest periods. As a result of their rigorous work schedules
8 and DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS
9 Members were from time to time denied their proper rest periods by DEFENDANTS and
10 DEFENDANTS' managers.

11 **C. Unlawful Rounding Violations**

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

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

1 off-duty meal break. Additionally, DEFENDANTS' unlawful rounding policy and practice
2 caused PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by
3 DEFENDANTS for more than ten (10) hours during a shift without receiving a second off-duty
4 meal break.

5 **D. Unreimbursed Business Expenses**

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

17 21. In the course of their employment, DEFENDANTS required PLAINTIFF and
18 other CALIFORNIA CLASS Members to use their personal cell phone to correspond and
19 coordinate tasks with their supervisor and/or other employees as a result of and in furtherance of
20 their job duties as employees for DEFENDANT. But for the use of their own personal cell phones,
21 PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential job
22 duties, including but not limited to sending and receiving work-related communications from
23 DEFENDANTS. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and
24 other CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in
25 the course of their employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA
26 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related
27 to the use of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

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1 **E. Wage Statement Violations**

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

10 23. From time to time during the CLASS PERIOD, when PLAINTIFF and other
11 CALIFORNIA CLASS Members missed meal and rest breaks, or were not paid for all hours
12 worked, DEFENDANTS failed to provide PLAINTIFF and other CALIFORNIA CLASS
13 Members with complete and accurate wage statements that include, among other things, the total
14 hours worked, all applicable hourly rates in effect during the pay period, and the corresponding
15 amount of time worked at each hourly rate.

16 24. In addition to the violations described above, DEFENDANTS, from time to time,
17 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
18 that comply with Cal. Lab. Code § 226.

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

23 **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

24 26. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
25 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
26 CLASS for all hours worked.

27 27. During the CLASS PERIOD, from time-to-time DEFENDANTS required
28 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work pre-shift, post-

1 shift, and during a scheduled meal break while off the clock. This resulted in PLAINTIFF and
2 other members of the CALIFORNIA CLASS having to work while off-the-clock.

3 28. DEFENDANTS directed and directly benefited from the uncompensated off-the-
4 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

5 29. DEFENDANTS controlled the work schedules, duties, protocols, applications,
6 assignments, and employment conditions of PLAINTIFF and the other members of the
7 CALIFORNIA CLASS.

8 30. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
9 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
10 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
11 wages earned and owed for all the work they performed, including pre-shift, post-shift, and during
12 meal period off-the-clock work.

13 31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
14 exempt employees, subject to the requirements of the California Labor Code.

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

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

22 34. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
23 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
24 for the time spent performing work before and after shifts, receiving and responding to work-
25 related communications on personal cell phones outside of their scheduled shifts and working
26 while clocked out for meal periods. DEFENDANTS' uniform policy and practice to not pay
27 PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in
28 accordance with applicable law is evidenced by DEFENDANTS' business records.

G. Regular Rate Violation- Overtime, Double Time, Meal and Rest Period Premiums, and Sick Pay

35. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for their overtime and double time hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages due them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and sick pay rates. DEFENDANTS' uniform policy and practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and double time worked, meal and rest period premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

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

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

38. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-discretionary compensation, DEFENDANTS failed to accurately include the non-discretionary compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. As a matter of law, the compensation received by PLAINTIFF and other CALIFORNIA CLASS members must be included in the "regular rate

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

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

23 **H. Unlawful Deductions**

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

28 **I. CLASS ACTION ALLEGATIONS**

1 41. PLAINTIFF brings the First through Ninth Causes of Action as a class action
2 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS’ current
3 and former non-exempt California employees (“CALIFORNIA CLASS”) during the period
4 beginning four years prior to the filing of the Complaint and ending on a date determined by the
5 Court (“CLASS PERIOD”).

6 42. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
7 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
8 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
9 illegal meal and rest period policies, failure to reimburse for business expenses, failure to
10 compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure
11 to maintain required records, and interest, statutory and civil penalties, attorney’s fees, costs, and
12 expenses.

13 43. The members of the class are so numerous that joinder of all class members is
14 impractical.

15 44. Common questions of law and fact regarding DEFENDANTS’ conduct, including
16 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to
17 provide legally compliant meal and rest periods, failure to reimburse for business expenses, failure
18 to provide accurate itemized wage statements, and failure to ensure they are paid at least minimum
19 wage and overtime, exist as to all members of the class and predominate over any questions
20 affecting solely any individual members of the class. Among the questions of law and fact
21 common to the class are:

- 22 a. Whether DEFENDANTS maintained legally compliant meal period policies and
23 practices;
- 24 b. Whether DEFENDANTS maintained legally compliant rest period policies and
25 practices;
- 26 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
27 CLASS Members accurate premium payments for missed meal and rest periods;
28

- d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime and double time wages;
- e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- f. Whether DEFENDANTS failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- g. Whether DEFENDANTS unlawfully deducted earned wages from PLAINTIFF and the CALIFORNIA CLASS Members' pay;
- h. Whether DEFENDANTS issued legally compliant wage statements;
- i. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- j. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- k. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

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

46. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same interests as the other members of the class.

47. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

48. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

1 49. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
2 interests of the other CALIFORNIA CLASS Members.

3 50. There is a strong community of interest among PLAINTIFF and the members of
4 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
5 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
6 sustained.

7 51. The questions of law and fact common to the CALIFORNIA CLASS Members
8 predominate over any questions affecting only individual members, including legal and factual
9 issues relating to liability and damages.

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

- 18 a. Inconsistent or varying adjudications with respect to individual members of the
19 CALIFORNIA CLASS which would establish incompatible standards of conduct
20 for the parties opposing the CALIFORNIA CLASS; and/or,
21 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
22 which would as a practical matter be dispositive of the interests of the other
23 members not party to the adjudication or substantially impair or impeded their
24 ability to protect their interests.

25 53. Class treatment provides manageable judicial treatment calculated to bring an
26 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
27 the conduct of DEFENDANTS.

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

5 54. 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 55. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

19 57. By the conduct alleged herein, DEFENDANT has engaged and continues to
20 engage in a business practice which violates California law, including but not limited to, the
21 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
22 including Sections 201, 202, 203, 204, 221, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
23 1198, 2802, for which this Court should issue declaratory and other equitable relief pursuant to
24 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
25 constitute unfair competition, including restitution of wages wrongfully withheld.

26 58. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair
27 in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous
28 or substantially injurious to employees, and were without valid justification or utility for which

1 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
2 Business & Professions Code, including restitution of wages wrongfully withheld.

3 59. By the conduct alleged herein, DEFENDANT's practices were deceptive and
4 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
5 mandated meal and rest periods and the required amount of compensation for missed meal and
6 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
7 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
8 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
9 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

10 60. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
11 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
12 other members of the CALIFORNIA CLASS to be underpaid during their employment with
13 DEFENDANT.

14 61. By the conduct alleged herein, DEFENDANT's practices were also unfair and
15 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
16 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
17 as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

26 64. By and through the unlawful and unfair business practices described herein,
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
28 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and

1 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
2 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
3 to unfairly compete against competitors who comply with the law.

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

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

14 67. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
15 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
16 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
17 engaging in any unlawful and unfair business practices in the future.

18 68. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
19 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
20 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
21 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
22 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
23 and economic harm unless DEFENDANT is restrained from continuing to engage in these
24 unlawful and unfair business practices.

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

7 77. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
9 minimum wage compensation for their time worked for DEFENDANT.

10 78. During the CLASS PERIOD, PLAINTIFF and the other members of the
11 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
12 failure to pay all earned wages.

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

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

25 81. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
27 and provide them with the requisite compensation, DEFENDANT acted and continues to act
28 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the

1 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
2 consequences to them, and with the despicable intent of depriving them of their property and legal
3 rights, and otherwise causing them injury in order to increase company profits at the expense of
4 these employees.

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

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

23 84. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
24 for DEFENDANT's willful and intentional violations of the California Labor Code and the
25 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
26 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
27 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.
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1 85. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
2 public policy, an employer must timely pay its employees for all hours worked.

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

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

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

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

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

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

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

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

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

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

26 96. DEFENDANTS knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
28 DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
2 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
3 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

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

104. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers. As a result, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest periods is evidenced by DEFENDANT's business records.

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

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

SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code §§ 226)

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

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

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

- a. Gross wages earned,
- b. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and

- 1 i. all applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each hourly rate by the employee.

3 109. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA
4 CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest
5 period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide
6 PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage
7 statements which failed to show, among other things, the total hours worked and all applicable
8 hourly rates in effect during the pay period and the corresponding amount of time worked at each
9 hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods. Further,
10 from time to time, DEFENDANTS failed to issue wage statements that provided the accurate
11 name and address of the legal entity that is the employer of PLAINTIFF and other CALIFORNIA
12 CLASS Members.

13 110. In addition to the foregoing, DEFENDANTS failed to provide itemized wage
14 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
15 requirements of California Labor Code Section 226.

16 111. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
17 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
18 CLASS. These damages include, but are not limited to, costs expended calculating the correct
19 wages for all missed meal and rest breaks and the amount of employment taxes which were not
20 properly paid to state and federal tax authorities. These damages are difficult to estimate.
21 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
22 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
23 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
24 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
25 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
26 of the CALIFORNIA CLASS herein).

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

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

5 112. 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.

8 113. Cal. Lab. Code § 200 provides that:

9 As used in this article:

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

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

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

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

29 116. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
Members' employment contract.

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

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

1 118. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
2 terminated, and DEFENDANT has not tendered payment of wages to these employees who were
3 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
4 required by law.

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

10 **EIGHTH CAUSE OF ACTION**

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

12 **(Cal. Lab. Code §§ 2802)**

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

14 120. 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.

17 121. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

22 122. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal.
23 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
24 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
25 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
26 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
27 using their personal cellular phone all on behalf of and for the benefit of DEFENDANTS.
28 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of
DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse

1 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
2 their personal cellular phones for DEFENDANTS within the course and scope of their
3 employment for DEFENDANTS. These expenses were necessary to complete their principal job
4 duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their
5 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
6 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
7 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer
8 is required to do under the laws and regulations of California.

9 123. PLAINTIFF therefore demands reimbursement on behalf of the members of the
10 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
11 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with
12 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

13 **NINTH CAUSE OF ACTION**

14 **Unlawful Deductions from PLAINTIFF and CLASS MEMBERS Paychecks**

15 **[Cal. Labor Code §§ 221 and 223]**

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

17 124. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
18 the allegations in the preceding paragraphs.

19 125. During the CLASS PERIOD, DEFENDANT regularly and consistently
20 maintained corporate policies and procedures designed to reduce labor costs by reducing or
21 minimizing the amount of compensation paid to its employees, including but not limited to,
22 overtime compensation.

23 126. DEFENDANT made deductions from PLAINTIFF and members of the
24 CALIFORNIA CLASS' paychecks for unspecified reasons.

25 127. Labor Code § 221 provides it is unlawful for any employer to collect or receive
26 from an employee any part of wages theretofore paid by employer to employee.

27 128. Labor Code § 223 provides that where any statute or contract requires an employer
28 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while

1 purporting to pay the wage designated by statute or by contract. Labor Code section 225 further
2 provides that the violation of any provision of Labor Code §§ 221 and 223 is a misdemeanor.

3 129. As a result of the conduct alleged above, DEFENDANTS unlawfully collected or
4 received from PLAINTIFF and the members of the CALIFORNIA CLASS' part of the wages
5 paid to their employees.

6 130. Wherefore, PLAINTIFF and the members of the CALIFORNIA CLASS demand
7 the return of all wages unlawfully deducted from the paychecks, including interest thereon,
8 penalties, reasonable attorneys' fees, and costs of suit pursuant to Labor Code §§ 225.5 and 1194.

9 **PRAYER FOR RELIEF**

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

12 1. On behalf of the CALIFORNIA CLASS:

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

23 2. On behalf of the CALIFORNIA CLASS:

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

1 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
2 applicable CLASS PERIOD plus interest thereon at the statutory rate;

3 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
4 the applicable IWC Wage Order;

5 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
6 which a violation occurs and one hundred dollars (\$100) per each member of the
7 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
8 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
9 violation of Cal. Lab. Code § 226

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

13 3. On all claims:

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

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

16 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
17

18 DATED: February 2, 2022

ZAKAY LAW GROUP, APLC

19
20 By: 
21 Shani O. Zakay
22 Attorney for PLAINTIFF
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DEMAND FOR A JURY TRIAL

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

DATED: February 2, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Trillium Pumps USA, Inc.
40 CT Corp. System
330 N. Brand Blvd., St. 700
Glendale, CA 91203



9590 9402 7020 1225 2850 82

2. Article Number (Transfer from service label)

7021 2720 0000 9972 5672

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

FEB 7 2022

Vina Paga 2.2.22

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