

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

DARAKA BANKS, an individual, ROBERTA
SALAZAR, an individual, and on behalf of all
persons similarly situated

PLAINTIFFS,

vs.

GENERAL MOTORS LLC, a Delaware
limited liability company; GENERAL
MOTORS COMPANY, a Delaware
corporation; and Does 1 through 50, Inclusive,

DEFENDANTS.

Case No.: CIVSB2203661

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
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;

VIA FAX

- 1 6. FAILURE TO PROVIDE ACCURATE
2 ITEMIZED STATEMENTS IN
3 VIOLATION OF CAL. LAB. CODE §
4 226;
5 7. FAILURE TO PAY WAGES WHEN
6 DUE IN VIOLATION OF CAL. LABOR
7 CODE §§ 201, 202 AND 203; and
8 8. VIOLATION OF THE PRIVATE
9 ATTORNEYS GENERAL ACT
10 [LABOR CODE §§ 2698 ET SEQ.]

11 [JURY TRIAL DEMANDED]

12 Plaintiffs DARAKA BANKS (“Plaintiff Banks”) and ROBERTA SALAZAR (“Plaintiff
13 Salazar”) (collectively “PLAINTIFFS”), on behalf of themselves, and on behalf of all those
14 similarly situated, allege on information and belief, except for their own acts and knowledge, the
15 following:

16 **THE PARTIES**

17 1. Defendant GENERAL MOTORS LLC (“Defendant General Motors LLC”) is a
18 Delaware limited liability company that at all relevant times mentioned herein conducted and
19 continues to conduct substantial business in the State of California.

20 2. Defendant GENERAL MOTORS COMPANY (“Defendant General Motors
21 Company”) is a Delaware corporation that at all relevant time mentioned herein conducted and
22 continues to conduct substantial business in the State of California.

23 3. Defendant General Motors LLC and Defendant General Motors Company were
24 the joint employers of PLAINTIFFS as evidenced by the contracts signed and by the company
25 the PLAINTIFFS performed work for respectively, and are therefore jointly responsible as
26 employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS”
27 and/or “DEFENDANT.”

28 4. DEFENDANTS design, manufacture and sell automobiles in the State of
California, including at the San Bernardino, California location where PLAINTIFFS worked.

5. The true names and capacities, whether individual, corporate, subsidiary,
partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names pursuant

1 to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege
2 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
3 PLAINTIFFS are informed and believe, and based upon that information and belief allege, that
4 the Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter
5 collectively “DEFENDANTS” or “DEFENDANT”), are responsible in some manner for one or
6 more of the events and happenings that proximately caused the injuries and damages hereinafter
7 alleged.

8 6. The agents, servants and/or employees of the DEFENDANTS and each of them
9 acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority
10 as the agent, servant and/or employee of the DEFENDANT, and personally participated in the
11 conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
12 Consequently, the acts of each of the DEFENDANTS are legally attributable to the other and all
13 DEFENDANTS are jointly and severally liable to PLAINTIFFS and those similarly situated, for
14 the loss sustained as a proximate result of the conduct of the DEFENDANTS’ agents, servants
15 and/or employees.

16 7. Plaintiff Banks has worked for DEFENDANTS since May of 2019. During that
17 time period, Plaintiff Banks worked as a non-exempt employee, paid on an hourly basis and
18 entitled to certain bonuses, overtime pay and legally complaint meal and rest periods. Plaintiff
19 Salazar has worked for DEFENDANTS since April of 2018. During that time period, Plaintiff
20 Salazar worked as a non-exempt employee, paid on an hourly basis and entitled to certain
21 bonuses, overtime pay and legally complaint meal and rest periods.

22 8. PLAINTIFFS bring this Class Action on behalf of themselves and a California
23 class, defined as all persons who are or previously were employed by Defendant General Motors
24 LLC and/or Defendant General Motors Company in California and classified as non-exempt
25 employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years
26 prior to the filing of this Complaint and ending on the date as determined by the Court (“CLASS
27 PERIOD”). The members of the class are so numerous that joinder of all class members is
28

1 impractical. PLAINTIFFS reserve the right to amend the following class definitions before the
2 Court determines whether class certification is appropriate, or thereafter upon leave of Court:

3 9. PLAINTIFFS bring this Class Action on behalf of themselves and on behalf of the
4 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
5 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice
6 which (1) failed to provide PLAINTIFFS and the CALIFORNIA CLASS with legally compliant
7 meal and rest periods or an additional hour of pay at the regular rate of compensation in *lieu*
8 thereof in violation of California Labor Code Sections 226.7(c), 512(a) and the applicable
9 Industrial Welfare Commission Wage Order, (2) failed to pay PLAINTIFFS and the
10 CALIFORNIA CLASS for all hours worked in violation of, *inter alia*, California Labor Code
11 Sections 510, 1194, 1197, and 1197.1, (3) failed to PAY PLAINTIFFS and the CALIFORNIA
12 CLASS at the correct regular rate of pay for overtime, sick pay and meal and rest period
13 premiums, and (4) failed to provide accurate itemized wage statements in violation of California
14 Labor Code Sections 226 and 226.3.

15 10. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
16 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain
17 wages due PLAINTIFFS and the other members of the CALIFORNIA CLASS.

18 11. PLAINTIFFS and the other members of the CALIFORNIA CLASS seek an
19 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
20 PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been economically
21 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal
22 and equitable relief

23 **JURISDICTION AND VENUE**

24 12. The Superior Court of the State of California has jurisdiction in this matter because
25 DEFENDANT, a California limited liability company, and DOES 1 through 50 inclusive
26 (hereinafter "DEFENDANT" or "DEFENDANTS"), are qualified to do business in California and
27 regularly conduct business in California. Further, no federal question is at issue because the claims
28 are based solely on California law.

13. Venue is proper in this judicial district and the County of San Bernardino, California because DEFENDANTS maintain offices and facilities and transact business in the County of San Bernardino, and because DEFENDANTS' illegal payroll policies and practices which are the subject of this action were applied, at least in part, to residents of the County of San Bernardino.

THE CONDUCT

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

A. Meal Period Violations

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

Members to work without paying them for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFFS' demanding work requirements and DEFENDANTS' understaffing, DEFENDANTS required PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFFS' off-duty meal break. Indeed, there were rarely days where PLAINTIFFS and other CALIFORNIA CLASS Members would even receive a partial lunch. Further, PLAINTIFFS and other CALIFORNIA CLASS Members were required to return to work early from their meal breaks in order to abide by DEFENDANTS' policy that its employees are to resume their work exactly within thirty (30) minutes after their meal breaks began. As such, PLAINTIFFS and other CALIFORNIA CLASS Members were required to forfeit full thirty (30) minute meal breaks. As a result, the PLAINTIFFS and other CALIFORNIA CLASS Members forfeited minimum wage and overtime wages by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business records.

16. From time-to-time during the CLASS PERIOD, as a result of their rigorous work schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFFS and other CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and other CALIFORNIA CLASS Members were required from time to time to perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these employees were required by DEFENDANTS to work ten (10) hours of work from time to time. The nature of the work performed by the PLAINTIFFS and the members of the CALIFORNIA CLASS does not qualify for limited and narrowly construed "on-duty" meal period exception. PLAINTIFFS and other members of the CALIFORNIA CLASS therefore

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

3 **B. Rest Period Violations**

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

18 **C. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
19 **and Sick Pay**

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

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

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

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

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

D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations

23. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continue to fail to accurately pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required PLAINTIFFS and the other members of the CALIFORNIA CLASS to perform off-the-clock work. Notwithstanding, from time-to-time DEFENDANTS failed to pay PLAINTIFFS and other members of the CALIFORNIA CLASS necessary wages for attending for performing work at DEFENDANTS' direction, request and benefit, while off-the clock pre-shift and during meal periods.

24. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFFS and other members of the CALIFORNIA CLASS to perform pre-shift work, including but not limited to, submitting to Covid-19 health screenings and temperature checks.

25. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFFS and other members of the CALIFORNIA CLASS to remain available for work-related communications while off-the-clock.

26. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFFS and the other members of the CALIFORNIA CLASS.

1 27. DEFENDANTS controlled the work schedules, duties, protocols, applications,
2 assignments and employment conditions of PLAINTIFFS and the other members of the
3 CALIFORNIA CLASS.

4 28. DEFENDANTS were able to track the amount of time PLAINTIFFS and the other
5 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
6 document, track, or pay PLAINTIFFS and the other members of the CALIFORNIA CLASS all
7 wages earned and owed for all the work they performed, including off-the-clock work.

8 29. PLAINTIFFS and the other members of the CALIFORNIA CLASS were non-
9 exempt employees, subject to the requirements of the California Labor Code.

10 30. DEFENDANTS' policies and practices deprived PLAINTIFFS and the other
11 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
12 owed for the off-the-clock work activities and their required meal periods. Because PLAINTIFFS
13 and the other members of the CALIFORNIA CLASS typically worked over 40 hours in a
14 workweek, and more than eight (8) hours per day, DEFENDANTS' policies and practices also
15 deprived them of overtime pay.

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

18 32. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
19 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
20 for the time spent submitting to Covid-19 health screenings and temperature
21 checks. DEFENDANTS' uniform policy and practice to not pay PLAINTIFFS and the members
22 of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is
23 evidenced by DEFENDANTS' business records.

24 **E. Wage Statement Violations**

25 33. California Labor Code Section 226 requires an employer to furnish its employees
26 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
27 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
28 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name

of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

34. From time to time during the CLASS PERIOD, when PLAINTIFFS and other CALIFORNIA CLASS Members missed meal and rest breaks, were paid inaccurate missed meal and rest period premiums, were paid overtime in the same pay period where they earned a bonus, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods. Further, from time to time during the CLASS PERIOD, DEFENDANTS failed to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements that provided the accurate total hours worked in each pay period, in violation of Cal. Lab. Code § 226(a)(2).

35. In addition to the violations described above, DEFENDANTS, from time to time, failed to provide PLAINTIFFS and the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226, and specifically DEFENDANTS failed to include the correct total number of hours worked on the wage statements.

36. As a result, DEFENDANTS issued PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

F. Unlawful Rounding Violations

37. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual time these employees worked each day,

1 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
2 policy and practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being
3 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
4 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
5 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
6 these employees for all their time worked, including the applicable overtime compensation for
7 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
8 time to time, forfeited compensation for their time worked by working without their time being
9 accurately recorded and without compensation at the applicable overtime rates.

10 38. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
11 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'
12 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful
13 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
14 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
15 receiving an off-duty meal break. Additionally, DEFENDANTS' unlawful rounding policy and
16 practice caused PLAINTIFFS and CALIFORNIA CLASS Members to perform work as ordered
17 by DEFENDANTS for more than ten (10) hours during a shift without receiving a second off-
18 duty meal break.

19 **G. CLASS ACTION ALLEGATIONS**

20 39. PLAINTIFFS brings the First through Seventh Causes of Action as a class action
21 pursuant to California Code of Civil Procedure § 382 on behalf of the CALIFORNIA CLASS,
22 defined, *supra*, that who worked for Defendant General Motors LLC and/or Defendant General
23 Motors Company (the "CALIFORNIA CLASS") during the period beginning four years prior to
24 the filing of the Complaint and ending on a date determined by the Court ("CLASS PERIOD").

25 40. PLAINTIFFS and the other members of the CALIFORNIA CLASS have
26 uniformly been deprived of wages and penalties from unpaid wages earned and due, including
27 but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest
28

1 period premiums, illegal meal and rest period policies, failure to separately compensate rest
2 periods, failure to provide accurate itemized wage statements, failure to maintain required
3 records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

4 41. The members of the class are so numerous that joinder of all class members is
5 impractical.

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

15 a. Whether DEFENDANTS maintained legally compliant
16 meal period policies and practices;

17 b. Whether DEFENDANTS maintained legally compliant rest
18 period policies and practices;

19 c. Whether DEFENDANTS failed to pay PLAINTIFFS and
20 members of the CALIFORNIA CLASS accurate premium payments
21 for missed meal and rest periods;

22 d. Whether DEFENDANTS failed to pay PLAINTIFFS and
23 members of the CALIFORNIA CLASS accurate overtime wages;

24 e. Whether DEFENDANTS failed to pay PLAINTIFFS and
25 members of the CALIFORNIA CLASS accurate sick pay wages;

26 f. Whether DEFENDANTS failed to pay PLAINTIFFS and
27 members of the CALIFORNIA CLASS accurate meal and rest
28

period premiums;

g. Whether DEFENDANTS failed to pay PLAINTIFFS and members of the CALIFORNIA CLASS at least minimum wage for all hours worked;

h. Whether DEFENDANTS issued legally compliant wage statements;

i. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFFS 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 PLAINTIFFS 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; and

k. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFFS and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

43. PLAINTIFFS are a member of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

44. PLAINTIFFS' claims are typical of the claims of the class, and PLAINTIFFS have the same interests as the other members of the class.

45. PLAINTIFFS will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

46. PLAINTIFFS retained able class counsel with extensive experience in class action

litigation.

47. Further, PLAINTIFFS' interests are coincident with, and not antagonistic to, the interests of the other member of the CALIFORNIA CLASS.

48. There is a strong community of interest among PLAINTIFFS and the members of the CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

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

50. 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.

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

1 of DEFENDANTS.

2 **FIRST CAUSE OF ACTION**

3 **For Unlawful Business Practices**

4 **[Cal. Bus. And Prof. Code §§ 17200, et seq.]**

5 (By PLAINTIFFS, the CALIFORNIA CLASS and Against All Defendants)

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

9 52. DEFENDANTS are a “person” as that term is defined under Cal. Bus. and Prof.
10 Code § 17021.

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

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

24 54. By the conduct alleged herein, DEFENDANTS have engaged and continues to
25 engage in a business practice which violates California law, including but not limited to, the
26 applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor
27 Code including Sections 201, 202, 203, 204, 226, 226.3, 226.7, 246, 510, 512, 515, 558, 1194,
28 1197, 1197.1, 1198, 1198.5, and 2802 for which this Court should issue declaratory and other

equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

56. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent in that DEFENDANTS' uniform policy and practice failed to, *inter alia*, provide the legally mandated meal and rest periods, the required accurate amount of compensation for missed meal and rest periods, overtime, and minimum wages owed, provide accurate itemized wage statements, due to a systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

57. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFFS and the other members of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

58. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide legally required uninterrupted duty-free meal breaks to PLAINTIFFS and the other members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

59. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each CALIFORNIA CLASS member, one (1) hour of pay at the correct regular rate of compensation for each workday in which an off-duty meal period was not timely provided for each five (5)

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

3 60. PLAINTIFFS further demand on behalf of themselves and on behalf of each
4 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
5 not timely provided and/or paid as required by law.

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

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

17 63. PLAINTIFFS and the other members of the CALIFORNIA CLASS were further
18 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair
19 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
20 engaging in any unlawful and unfair business practices in the future.

21 64. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
22 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
23 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As
24 a result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other
25 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
26 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
27 unlawful and unfair business practices.
28

[Cal. Lab. Code §§ 510, *et seq.*]

70. During the LABOR CLASS PERIOD, PLAINTIFFS and CALIFORNIA CLASS members were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked or were not accurately compensated for all overtime hours worked.

1 71. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
3 implementing a uniform policy and practice that failed to accurately record overtime worked by
4 PLAINTIFFS and other CALIFORNIA CLASS members and denied accurate compensation to
5 PLAINTIFFS 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 72. In committing these violations of the California Labor Code, DEFENDANTS
9 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
10 consequently underpaid the actual time worked by PLAINTIFFS and other members of the
11 CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid the payment of all
12 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
13 Commission requirements and other applicable laws and regulations.

14 73. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
15 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full
16 compensation for all overtime worked.

17 74. 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
19 PLAINTIFFS and the other members of the CALIFORNIA CLASS. Further, PLAINTIFFS and
20 the other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
21 agreement that would preclude the causes of action contained herein this Complaint. Rather, the
22 PLAINTIFFS bring this Action on behalf of themselves and the CALIFORNIA CLASS based
23 on DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
24 California.

25 75. During the LABOR CLASS PERIOD, PLAINTIFFS and the other members of
26 the CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting
27 a failure to pay all earned wages.

1 76. DEFENDANTS failed to accurately pay PLAINTIFFS 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 PLAINTIFFS and the other members of the CALIFORNIA CLASS were required to
5 work, and did in fact work, overtime as to which DEFENDANTS failed to accurately record and
6 pay using the applicable overtime rate as evidenced by DEFENDANTS' business records and
7 witnessed by employees.

8 77. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
9 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the true
10 time they worked, PLAINTIFFS and the other members of the CALIFORNIA CLASS have
11 suffered and will continue to suffer an economic injury in amounts which are presently unknown
12 to them and which will be ascertained according to proof at trial.

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

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

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

THIRD CAUSE OF ACTION

For Failure to Pay Minimum Wages

[Cal. Lab. Code §§ 1194, 1197 and 1197.1]

(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)

81. PLAINTIFFS, 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.

82. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay minimum and reporting time wages to PLAINTIFFS and CALIFORNIA CLASS members during the LABOR CLASS PERIOD.

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

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

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

3 86. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFFS and
4 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
5 they work. For instance, as set forth herein, DEFENDANTS maintained a uniform policy that
6 required PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS'
7 off-duty meal break without compensation. Further, as set forth herein, DEFENDANTS'
8 uniform policy and practice was to unlawfully and intentionally deny timely payment of wages
9 due to PLAINTIFFS and the other members of the CALIFORNIA CLASS.

10 87. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
11 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
12 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFFS
13 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

20 89. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
21 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive the correct
22 minimum wage compensation for their time worked for DEFENDANTS.

23 90. During the LABOR CLASS PERIOD, PLAINTIFFS and the other members of
24 the CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting
25 a failure to pay all earned wages.

26 91. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
27 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the true
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1 time they worked, PLAINTIFFS and the other members of the CALIFORNIA CLASS have
2 suffered and will continue to suffer an economic injury in amounts which are presently unknown
3 to them and which will be ascertained according to proof at trial.

4 92. DEFENDANTS knew or should have known that PLAINTIFFS and the other
5 members of the CALIFORNIA CLASS were under compensated for their time worked.
6 DEFENDANTS systematically elected, either through intentional malfeasance or gross
7 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
8 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
9 PLAINTIFFS and the other members of the CALIFORNIA CLASS the correct minimum wages
10 for their time worked.

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

19 94. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore
20 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
21 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
22 California Labor Code and/or other applicable statutes. To the extent minimum wage
23 compensation is determined to be owed to the CALIFORNIA CLASS members who have
24 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
25 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
26 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
27 members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good
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1 faith. Further, PLAINTIFFS and other CALIFORNIA CLASS members are entitled to seek and
2 recover statutory costs.

3 **FOURTH CAUSE OF ACTION**

4 **For Failure to Provide Required Meal Periods**

5 **[Cal. Lab. Code §§ 226.7 & 512]**

6 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

25 97. DEFENDANTS further violates California Labor Code §§ 226.7 and the
26 applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS
27 Members who were not provided a meal period, in accordance with the applicable Wage Order,
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one additional hour of compensation at each employee's regular rate of compensation for each workday that a meal period was not provided.

98. As a proximate result of the aforementioned violations, PLAINTIFFS 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

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFFS and the CALIFORNIA CLASS and Against All DEFENDANTS)

99. PLAINTIFFS, 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.

100. During the LABOR CLASS PERIOD, PLAINTIFFS and other CALIFORNIA CLASS members were from time to time 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 from time to time. PLAINTIFFS and other CALIFORNIA CLASS members were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS members were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

101. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFFS 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 compensation for each

1 workday that rest period was not provided.

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

5 **SIXTH CAUSE OF ACTION**

6 **For Failure to Provide Accurate Itemized Statements**

7 **[Cal. Lab. Code § 226]**

8 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

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

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

1 8. the name and address of the legal entity that is the employer, and

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

4 105. When PLAINTIFFS and the other CALIFORNIA CLASS members were not
5 compensated for all wages due to them for their off-the-clock work, and for their missed meal
6 and rest breaks, and for overtime, DEFENDANTS also failed to provide PLAINTIFFS and the
7 other members of the CALIFORNIA CLASS with complete and accurate wage statements. Cal.
8 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an
9 accurate itemized wage statement in writing showing, among other things, gross wages earned
10 and all applicable hourly rates in effect during the pay period and the corresponding amount of
11 time worked at each hourly rate. As a result, DEFENDANTS provided PLAINTIFFS and the
12 other members of the CALIFORNIA CLASS with wage statements which violate Cal. Lab. Code
13 § 226. Further, from time to time during the CLASS PERIOD, DEFENDANTS failed to provide
14 PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements that
15 provided the accurate total hours worked in each pay period, in violation of Cal. Lab. Code §
16 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANTS failed to
17 issue to PLAINTIFFS an itemized wage statement that lists all the requirements under California
18 Labor Code 226 *et seq.*

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

3 **SEVENTH CAUSE OF ACTION**

4 **For Failure to Pay Wages When Due**

5 **[Cal. Lab. Code §§ 201, 202, 203]**

6 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

9 108. Cal. Lab. Code § 200 provides, in relevant part, that:

10 As used in this article:

11 (a) "Wages" includes all amounts for labor performed by employees of every
12 description, whether the amount is fixed or ascertained by the standard of time,
13 task, piece, Commission basis, or other method of calculation.

14 (b) "Labor" includes labor, work, or service whether rendered or performed under
15 contract, subcontract, partnership, station plan, or other agreement if the labor to be
16 paid for is performed personally by the person demanding payment.

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

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

111. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS Members' employment contract. Cal. Lab. Code § 203 provides, in relevant part, that: "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."

112. The employment of PLAINTIFFS and many CALIFORNIA CLASS Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

113. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated, PLAINTIFFS demand thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CALIFORNIA CLASS PERIOD and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

EIGHTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§2698 et seq.)

(Alleged by PLAINTIFFS against all Defendants)

114. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

116. PLAINTIFFS, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves all non-exempt and exempt employees who worked for Defendant General Motors LLC and/or Defendant General Motors Company in California during the time period of December 17, 2020 until the present (the "AGGRIEVED EMPLOYEES").

117. On December 17, 2021, PLAINTIFF Banks gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. On March 7, 2022, Plaintiff Salazar gave written notice by certified mail to the Agency and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for Plaintiffs to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

118. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANTS (a) failed to properly record and pay PLAINTIFFS and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized wage statements, (c) failed to provide compliant meal breaks and rest breaks, (d) failed to allow employees to take duty-free rest periods, (e) failed to correctly calculate the regular rate of pay, and (f) failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197,

1 1197.1, 1197.14, 1198, 1199, 2802, and 2804 Cal. Bus. & Prof. Code §§17200 and 17203, and
2 the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result
3 of such conduct. PLAINTIFFS hereby seek recovery of civil penalties as prescribed by the Labor
4 Code Private Attorney General Act of 2004 as the representative of the State of California for
5 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFFS pray for judgment against each DEFENDANTS, jointly
8 and severally, as follows:

9 1. On behalf of the CALIFORNIA CLASS:

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

12 B) An order temporarily, preliminarily and permanently enjoining and restraining
13 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

14 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully
15 withheld from compensation due to PLAINTIFFS and the other members of the CALIFORNIA
16 CLASS;

17 D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund
18 for restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFFS and to
19 the other members of the CALIFORNIA CLASS;

20 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
21 of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ.
22 Proc. § 382;

- 23 1. Compensatory damages, according to proof at trial, including compensatory
24 damages for overtime compensation due PLAINTIFFS and the other members of
25 the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS
26 PERIOD plus interest thereon at the statutory rate;

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

3. Meal and rest period compensation pursuant to California Labor Code Sections 226.7 and 512 and the applicable IWC Wage Order;

4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and,

2. On behalf of the State of California and with respect to all AGGRIEVED

EMPLOYEYES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004;

3. On all claims:

A) An award of interest, including prejudgment interest at the legal rate;

B) Such other and further relief as the Court deems just and equitable; and,

C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,

including, but not limited to, pursuant to Labor Code §218.5, §226, and/or §1194.

Dated: July 8, 2022

JCL LAW FIRM, APC

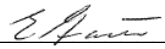

Eduardo Garcia
Attorney for PLAINTIFFS

DEMAND FOR A JURY TRIAL

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

Dated: July 8, 2022

JCL LAW FIRM, APC



Eduardo Garcia
Attorney for PLAINTIFFS

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #44601

December 17, 2021

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

GENERAL MOTORS LLC

c/o CSC – Lawyers Incorporating Services
2710 Gateway Oaks Dr., Suite 150N
Sacramento, CA 95833

***Sent Via Certified Mail & Return Receipt
No. 7021 2720 0000 9972 5153***

GENERAL MOTORS COMPANY

c/o Corporate Service Company
251 Little Falls Drive
Wilmington, DE 19808

***Sent Via Certified Mail & Return Receipt
No. 7021 2720 0000 9972 514***

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

Dear Sir/Madam:

Our offices represent Plaintiff DARAKA BANKS (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendants GENERAL MOTORS LLC and GENERAL MOTORS COMPANY (collectively, “Defendants”). Plaintiff has been employed by Defendants in California since May of 2019 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. Defendants, 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, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence, Plaintiff contends that Defendants 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 Defendants conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 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 General Motors LLC and/or Defendant General Motors Company 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 Defendants, 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, Defendants are 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.

If the agency needs any further information, please do not hesitate to ask. The representative action lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the PAGA wide 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,



Shani O. Zakay
Attorney for Plaintiff

JCL LAW FIRM, APC

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jackland@zakaylaw.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

DARAKA BANKS, individually and on behalf
of all persons similarly situated

PLAINTIFFS,

vs.

GENERAL MOTORS LLC, a Delaware
limited liability company; GENERAL
MOTORS COMPANY, a Delaware
corporation; and Does 1 through 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 OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
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 PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203

[JURY TRIAL DEMANDED]

Plaintiff DARAKA BANKS (“PLAINTIFF”), individually and on behalf of all those similarly situated, allege on information and belief, except for their own acts and knowledge, the following:

THE PARTIES

1. Defendant GENERAL MOTORS LLC (“Defendant General Motors LLC”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial business in the State of California.

2. Defendant GENERAL MOTORS COMPANY (“Defendant General Motors Company”) is a Delaware corporation that at all relevant time mentioned herein conducted and continues to conduct substantial business in the State of California.

3. Defendant General Motors LLC and Defendant General Motors Company were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

4. DEFENDANTS design, manufacture and sell automobiles in the State of California, including at the San Bernardino, California location where PLAINTIFF worked.

5. 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 allege, that the

1 Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter
2 collectively “DEFENDANTS” or “DEFENDANT”), are responsible in some manner for one or
3 more of the events and happenings that proximately caused the injuries and damages hereinafter
4 alleged.

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

13 7. Plaintiff has worked for DEFENDANTS since May of 2019. During that time
14 period, PLAINTIFF worked as a non-exempt employee, paid on an hourly basis and entitled to
15 certain bonuses, overtime pay and legally compliant meal and rest periods.

16 8. PLAINTIFF brings this Class Action on behalf of himself and a California class,
17 defined as all persons who are or previously were employed by Defendant General Motors LLC
18 and/or Defendant General Motors Company in California and classified as non-exempt
19 employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years
20 prior to the filing of this Complaint and ending on the date as determined by the Court (“CLASS
21 PERIOD”). The members of the class are so numerous that joinder of all class members is
22 impractical. PLAINTIFF reserves the right to amend the following class definitions before the
23 Court determines whether class certification is appropriate, or thereafter upon leave of Court:

24 9. PLAINTIFF brings this Class Action on behalf of himself and on behalf of the
25 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
26 incurred during the CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice
27 which (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant
28

1 meal and rest periods or an additional hour of pay at the regular rate of compensation in *lieu*
2 thereof in violation of California Labor Code Sections 226.7(c), 512(a) and the applicable
3 Industrial Welfare Commission Wage Order, (2) failed to pay PLAINTIFF and the
4 CALIFORNIA CLASS for all hours worked in violation of, *inter alia*, California Labor Code
5 Sections 510, 1194, 1197, and 1197.1, (3) failed to PAY PLAINTIFF and the CALIFORNIA
6 CLASS at the correct regular rate of pay for overtime, sick pay and meal and rest period
7 premiums, and (4) failed to provide accurate itemized wage statements in violation of California
8 Labor Code Sections 226 and 226.3.

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

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

17 **JURISDICTION AND VENUE**

18 12. The Superior Court of the State of California has jurisdiction in this matter because
19 DEFENDANT, a California limited liability company, and DOES 1 through 50 inclusive
20 (hereinafter "DEFENDANT" or "DEFENDANTS"), are qualified to do business in California and
21 regularly conduct business in California. Further, no federal question is at issue because the claims
22 are based solely on California law.

23 13. Venue is proper in this judicial district and the County of San Bernardino,
24 California because DEFENDANTS maintain offices and facilities and transact business in the
25 County of San Bernardino, and because DEFENDANTS' illegal payroll policies and practices
26 which are the subject of this action were applied, at least in part, to residents of the County of San
27 Bernardino.

28 ///

THE CONDUCT

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

A. Meal Period Violations

15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's demanding work requirements and DEFENDANTS' understaffing, DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.

1 Indeed, there were rarely days where PLAINTIFF and other CALIFORNIA CLASS Members
2 would even receive a partial lunch. Further, PLAINTIFF and other CALIFORNIA CLASS
3 Members were required to return to work early from their meal breaks in order to abide by
4 DEFENDANTS' policy that its employees are to resume their work exactly within thirty (30)
5 minutes after their meal breaks began. As such, PLAINTIFF and other CALIFORNIA CLASS
6 Members were required to forfeit full thirty (30) minute meal breaks. As a result, the PLAINTIFF
7 and other CALIFORNIA CLASS Members forfeited minimum wage and overtime wages by
8 regularly working without their time being accurately recorded and without compensation at the
9 applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not
10 to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced
11 by DEFENDANTS' business records.

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

26 **B. Rest Period Violations**

27 17. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
28 CALIFORNIA CLASS Members were also required from time to time to work in excess of four

(4) hours without being provided ten (10) minute rest periods as a result of their rigorous work schedules and DEFENDANTS' inadequate staffing. Further, for the same reasons 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 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 required to remain on the premises, on duty, and on call. 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 from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

C. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Sick Pay

18. 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.

19. 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.

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

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

25 22. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
27 matter of company policy, practice and procedure, intentionally and knowingly failed to
28 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate

1 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
2 This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the
3 payment of the correct overtime and double time compensation, meal and rest period premiums,
4 and sick pay as required by California law which allowed DEFENDANTS to illegally profit and
5 gain an unfair advantage over competitors who complied with the law. To the extent equitable
6 tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANTS,
7 the CLASS PERIOD should be adjusted accordingly.

8 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

9 23. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
10 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
11 CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required
12 PLAINTIFF and the other members of the CALIFORNIA CLASS to perform off-the-clock work.
13 Notwithstanding, from time-to-time DEFENDANTS failed to pay PLAINTIFF and other
14 members of the CALIFORNIA CLASS necessary wages for attending for performing work at
15 DEFENDANTS' direction, request and benefit, while off-the clock pre-shift and during meal
16 periods.

17 24. During the CLASS PERIOD, from time-to-time DEFENDANTS required
18 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work,
19 including but not limited to, submitting to Covid-19 health screenings and temperature checks.

20 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required
21 PLAINTIFF and other members of the CALIFORNIA CLASS to remain available for work-
22 related communications while off-the-clock.

23 26. DEFENDANTS directed and directly benefited from the uncompensated off-the-
24 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

25 27. DEFENDANTS controlled the work schedules, duties, protocols, applications,
26 assignments and employment conditions of PLAINTIFF and the other members of the
27 CALIFORNIA CLASS.
28

1 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
2 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
3 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
4 wages earned and owed for all the work they performed, including off-the-clock work.

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

7 30. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
8 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
9 owed for the off-the-clock work activities and their required meal periods. Because PLAINTIFF
10 and the other members of the CALIFORNIA CLASS typically worked over 40 hours in a
11 workweek, and more than eight (8) hours per day, DEFENDANTS' policies and practices also
12 deprived them of overtime pay.

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

15 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
16 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
17 for the time spent submitting to Covid-19 health screenings and temperature
18 checks. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members
19 of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is
20 evidenced by DEFENDANTS' business records.

21 **E. Wage Statement Violations**

22 33. California Labor Code Section 226 requires an employer to furnish its employees
23 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
24 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
25 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
26 of the employee and only the last four digits of the employee's social security number or an
27 employee identification number other than a social security number, (8) the name and address of
28

the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

34. From time to time during the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, were paid inaccurate missed meal and rest period premiums, were paid overtime in the same pay period where they earned a bonus, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods. Further, from time to time during the CLASS PERIOD, DEFENDANTS failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements that provided the accurate total hours worked in each pay period, in violation of Cal. Lab. Code § 226(a)(2).

35. In addition to the violations described above, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226, and specifically DEFENDANTS failed to include the correct total number of hours worked on the wage statements.

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

F. Unlawful Rounding Violations

37. 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

1 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
2 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
3 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
4 these employees for all their time worked, including the applicable overtime compensation for
5 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
6 time to time, forfeited compensation for their time worked by working without their time being
7 accurately recorded and without compensation at the applicable overtime rates.

8 38. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
9 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
10 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
11 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
12 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
13 off-duty meal break. Additionally, DEFENDANTS' unlawful rounding policy and practice
14 caused PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by
15 DEFENDANTS for more than ten (10) hours during a shift without receiving a second off-duty
16 meal break.

17 **G. CLASS ACTION ALLEGATIONS**

18 39. PLAINTIFF brings the First through Seventh Causes of Action as a class action
19 pursuant to California Code of Civil Procedure § 382 on behalf of the CALIFORNIA CLASS,
20 defined, *supra*, that who worked for Defendant General Motors LLC and/or Defendant General
21 Motors Company (the "CALIFORNIA CLASS") during the period beginning four years prior to
22 the filing of the Complaint and ending on a date determined by the Court ("CLASS PERIOD").

23 40. PLAINTIFF and the other members of the CALIFORNIA CLASS have uniformly
24 been deprived of wages and penalties from unpaid wages earned and due, including but not
25 limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period
26 premiums, illegal meal and rest period policies, failure to separately compensate rest periods,
27 failure to provide accurate itemized wage statements, failure to maintain required records, and
28

1 interest, statutory and civil penalties, attorney's fees, costs, and expenses.

2 41. The members of the class are so numerous that joinder of all class members is
3 impractical.

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

13 a. Whether DEFENDANTS maintained legally compliant
14 meal period policies and practices;

15 b. Whether DEFENDANTS maintained legally compliant rest
16 period policies and practices;

17 c. Whether DEFENDANTS failed to pay PLAINTIFF and
18 members of the CALIFORNIA CLASS accurate premium payments
19 for missed meal and rest periods;

20 d. Whether DEFENDANTS failed to pay PLAINTIFF and
21 members of the CALIFORNIA CLASS accurate overtime wages;

22 e. Whether DEFENDANTS failed to pay PLAINTIFF and
23 members of the CALIFORNIA CLASS accurate sick pay wages;

24 f. Whether DEFENDANTS failed to pay PLAINTIFF and
25 members of the CALIFORNIA CLASS accurate meal and rest
26 period premiums;

27 g. Whether DEFENDANTS failed to pay PLAINTIFF and
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members of the CALIFORNIA CLASS at least minimum wage for all hours worked;

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; and

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.

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

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

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

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

47. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the

interests of the other member of the CALIFORNIA CLASS.

48. There is a strong community of interest among PLAINTIFF and the members of the CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

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

50. 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.

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.

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

3 **[Cal. Bus. And Prof. Code §§ 17200, et seq.]**

4 (By PLAINTIFF, the CALIFORNIA CLASS and Against All Defendants)

5 51. 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 52. DEFENDANTS are a “person” as that term is defined under Cal. Bus. and Prof.
9 Code § 17021.

10 53. 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
15 unfair competition may be enjoined in any court of competent
16 jurisdiction. The court may make such orders or judgments,
17 including the appointment of a receiver, as may be necessary to
18 prevent the use or employment by any person of any practice which
19 constitutes unfair competition, as defined in this chapter, or as may
20 be necessary to restore to any person in interest any money or
21 property, real or personal, which may have been acquired by means
22 of such unfair competition. Cal. Bus. & Prof. Code § 17203.

23 54. By the conduct alleged herein, DEFENDANTS have engaged and continues to
24 engage in a business practice which violates California law, including but not limited to, the
25 applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor
26 Code including Sections 201, 202, 203, 204, 226, 226.3, 226.7, 246, 510, 512, 515, 558, 1194,
27 1197, 1197.1, 1198, 1198.5, and 2802 for which this Court should issue declaratory and other
28 equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and

remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

56. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent in that DEFENDANTS' uniform policy and practice failed to, *inter alia*, provide the legally mandated meal and rest periods, the required accurate amount of compensation for missed meal and rest periods, overtime, and minimum wages owed, provide accurate itemized wage statements, due to a systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

58. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide legally required uninterrupted duty-free meal breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

59. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each CALIFORNIA CLASS member, one (1) hour of pay at the correct regular rate of compensation for each workday in which an off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

1 60. PLAINTIFF further demands on behalf of themselves and on behalf of each
2 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
3 not timely provided and/or paid as required by law.

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

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

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

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

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1 71. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
3 implementing a uniform policy and practice that 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 72. In committing these violations of the California Labor Code, DEFENDANTS
9 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
10 consequently underpaid the actual time worked by PLAINTIFF and other members of the
11 CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid the payment of all
12 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
13 Commission requirements and other applicable laws and regulations.

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

17 74. 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
19 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and
20 the other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
21 agreement that would preclude the causes of action contained herein this Complaint. Rather, the
22 PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA CLASS based on
23 DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
24 California.

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

1 76. DEFENDANTS failed to accurately pay 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 DEFENDANTS failed to accurately record and pay
6 using the applicable overtime rate as evidenced by DEFENDANTS' business records and
7 witnessed by employees.

8 77. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
9 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
10 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
11 suffered and will continue to suffer an economic injury in amounts which are presently unknown
12 to them and which will be ascertained according to proof at trial.

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

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

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

THIRD CAUSE OF ACTION

For Failure to Pay Minimum Wages

[Cal. Lab. Code §§ 1194, 1197 and 1197.1]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

81. 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.

82. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the LABOR CLASS PERIOD.

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

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

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

3 86. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the
4 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
5 work. For instance, as set forth herein, DEFENDANTS maintained a uniform policy that
6 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's
7 off-duty meal break without compensation. Further, as set forth herein, DEFENDANTS'
8 uniform policy and practice was to unlawfully and intentionally deny timely payment of wages
9 due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

10 87. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
11 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
12 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
13 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

23 90. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the
24 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
25 failure to pay all earned wages.

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

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

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

19 94. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
20 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
21 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
22 California Labor Code and/or other applicable statutes. To the extent minimum wage
23 compensation is determined to be owed to the CALIFORNIA CLASS members who have
24 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
25 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
26 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
27 members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good
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1 faith. Further, PLAINTIFF and other CALIFORNIA CLASS members are entitled to seek and
2 recover statutory costs.

3 **FOURTH CAUSE OF ACTION**

4 **For Failure to Provide Required Meal Periods**

5 **[Cal. Lab. Code §§ 226.7 & 512]**

6 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

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

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

98. 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

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

99. 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.

100. During the LABOR CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS members were from time to time 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 from time to time. 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 DEFENDANTS and DEFENDANTS' managers.

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

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

4 **SIXTH CAUSE OF ACTION**

5 **For Failure to Provide Accurate Itemized Statements**

6 **[Cal. Lab. Code § 226]**

7 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

8 103. PLAINTIFFS, 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.

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

- 13 1. gross wages earned,
- 14 2. total hours worked by the employee, except for any employee whose
15 compensation is solely based on a salary and who is exempt from payment of
16 overtime under subdivision (a) of Section 515 or any applicable order of the
17 Industrial Welfare Commission,
- 18 3. the number of piece rate units earned and any applicable piece rate if the
19 employee is paid on a piece-rate basis,
- 20 4. all deductions, provided that all deductions made on written orders of the
21 employee may be aggregated and shown as one item,
- 22 5. net wages earned,
- 23 6. the inclusive dates of the period for which the employee is paid,
- 24 7. the name of the employee and her or her social security number, except that by
25 January 1, 2008, only the last four digits of her or her social security number or
26 an employee identification number other than a social security number may be
27 shown on the itemized statement,
- 28 8. the name and address of the legal entity that is the employer, and

1 9. 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.

3 105. When PLAINTIFF and the other CALIFORNIA CLASS members were not
4 compensated for all wages due to them for their off-the-clock work, and for their missed meal
5 and rest breaks, and for overtime, DEFENDANTS also failed to provide PLAINTIFF and the
6 other members of the CALIFORNIA CLASS with complete and accurate wage statements. Cal.
7 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an
8 accurate itemized wage statement in writing showing, among other things, gross wages earned
9 and all applicable hourly rates in effect during the pay period and the corresponding amount of
10 time worked at each hourly rate. As a result, DEFENDANTS provided PLAINTIFF and the other
11 members of the CALIFORNIA CLASS with wage statements which violate Cal. Lab. Code §
12 226. Further, from time to time during the CLASS PERIOD, DEFENDANTS failed to provide
13 PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements that
14 provided the accurate total hours worked in each pay period, in violation of Cal. Lab. Code §
15 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANTS failed to
16 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
17 Labor Code 226 *et seq.*

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

1 **SEVENTH CAUSE OF ACTION**

2 **For Failure to Pay Wages When Due**

3 **[Cal. Lab. Code §§ 201, 202, 203]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

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

7 108. Cal. Lab. Code § 200 provides, in relevant part, that:

8 As used in this article:

9 (a) "Wages" includes all amounts for labor performed by employees of every
10 description, whether the amount is fixed or ascertained by the standard of time,
11 task, piece, Commission basis, or other method of calculation.

12 (b) "Labor" includes labor, work, or service whether rendered or performed under
13 contract, subcontract, partnership, station plan, or other agreement if the labor to be
14 paid for is performed personally by the person demanding payment.

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

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

27 111. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
28 Members' employment contract. Cal. Lab. Code § 203 provides, in relevant part, that: "If an

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

5 112. The employment of PLAINTIFF and many CALIFORNIA CLASS Members has
6 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

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

13 **PRAYER FOR RELIEF**

14 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly
15 and severally, as follows:

16 1. On behalf of the CALIFORNIA CLASS:

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

19 B) An order temporarily, preliminarily and permanently enjoining and restraining
20 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

21 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully
22 withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA
23 CLASS;

24 D) Restitutionary disgorgement of DEFENDANTS’s ill-gotten gains into a fluid fund
25 for restitution of the sums incidental to DEFENDANTS’s violations due to PLAINTIFF and to
26 the other members of the CALIFORNIA CLASS;

1 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
2 of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ.
3 Proc. § 382;

- 4 1. Compensatory damages, according to proof at trial, including compensatory
5 damages for overtime compensation due PLAINTIFF and the other members of
6 the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS
7 PERIOD plus interest thereon at the statutory rate;
- 8 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
9 which a violation occurs and one hundred dollars (\$100) per each member of the
10 CALIFORNIA CLASS for each violation in a subsequent pay period, not
11 exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of
12 costs for violation of Cal. Lab. Code § 226;
- 13 3. Meal and rest period compensation pursuant to California Labor Code Sections
14 226.7 and 512 and the applicable IWC Wage Order;
- 15 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
16 1197; and,

17 2. On all claims:

- 18 A) An award of interest, including prejudgment interest at the legal rate;
- 19 B) Such other and further relief as the Court deems just and equitable; and,
- 20 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
21 including, but not limited to, pursuant to Labor Code §218.5, §226, and/or §1194.

22 Dated: December 17, 2021

JCL LAW FIRM, APC



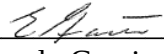
25 Eduardo Garcia
26 Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: December 17, 2021

JCL LAW FIRM, APC



Eduardo Garcia
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:

General Motors, LLC
40 USC-Lawyers Incorp. Services
2710 Gateway Oaks Dr., Ste. 150N
Sacramento, CA 95833



9590 9402 7020 1225 2856 31

2. Article Number (Transfer from service label)

7021 2720 0000 9972 5153

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

002-277 12.17.21

3. Service Type

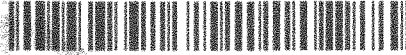
- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Mail Restricted Delivery (over \$500) | |

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:

General Motors Company
40 Corp. Service Company
251 Little Falls Dr.
Wilmington, DE 19808



9590 9402 7020 1225 2856 48

2. Article Number (Transfer from service label)

7021 2720 0000 9972 5146

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

John. [Signature]

C. Date of Delivery

12.17.21

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

002-277 12.17.21

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restrictive Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail on Delivery Restricted Delivery | |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |



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Eduardo Garcia, Esq.
egarcia@jcl-lawfirm.com

March 7, 2022

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

GENERAL MOTORS LLC

c/o CSC – Lawyers Incorporating Services
2710 Gateway Oaks Dr., Suite 150N
Sacramento, CA 95833

Sent via Certified Mail and Return Receipt No. 7021 2720 0000 9972 5993

GENERAL MOTORS COMPANY

c/o Corporate Service Company
251 Little Falls Drive
Wilmington, DE 19808

Sent via Certified Mail and Return Receipt No. 7021 2720 0000 9972 6006

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

Dear Sir/Madam:

Our offices represent Plaintiff ROBERTA SALAZAR (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendants GENERAL MOTORS LLC and GENERAL MOTORS COMPANY (collectively, “Defendants”). Plaintiff has been employed by Defendants in California since April of 2018 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. Defendants, 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, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, violates

the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant General Motors LLC and/or Defendant General Motors Company 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 Defendants, 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, Defendants are on notice that Plaintiff continues her 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 Defendants 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 Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'Jean-Claude Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
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Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
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Attorneys for Plaintiff ROBERTA MARIE SALAZAR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN BERNARDINO

ROBERTA MARIE SALAZAR, individually
and on behalf of all persons similarly situated

PLAINTIFFS,

vs.

GENERAL MOTORS LLC, a Delaware
limited liability company; GENERAL
MOTORS COMPANY, a Delaware
corporation; and Does 1 through 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 OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
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 PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203.

[JURY TRIAL DEMANDED]

Plaintiff ROBERTA MARIE SALAZAR (“PLAINTIFF”), individually and on behalf of all those similarly situated, allege on information and belief, except for their own acts and knowledge, the following:

THE PARTIES

1. Defendant GENERAL MOTORS LLC (“Defendant General Motors LLC”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial business in the State of California.

2. Defendant GENERAL MOTORS COMPANY (“Defendant General Motors Company”) is a Delaware corporation that at all relevant time mentioned herein conducted and continues to conduct substantial business in the State of California.

3. Defendant General Motors LLC and Defendant General Motors Company were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

4. DEFENDANTS design, manufacture and sell automobiles in the State of California, including at the San Bernardino, California location where PLAINTIFF worked.

5. 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 allege, that the

1 Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter
2 collectively “DEFENDANTS” or “DEFENDANT”), are responsible in some manner for one or
3 more of the events and happenings that proximately caused the injuries and damages hereinafter
4 alleged.

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

13 7. PLAINTIFF has worked for DEFENDANTS since April of 2018. During that time
14 period, PLAINTIFF worked as a non-exempt employee, paid on an hourly basis and entitled to
15 certain bonuses, overtime pay and legally compliant meal and rest periods.

16 8. PLAINTIFF brings this Class Action on behalf of herself and a California class,
17 defined as all persons who are or previously were employed by Defendant General Motors LLC
18 and/or Defendant General Motors Company in California and classified as non-exempt
19 employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years
20 prior to the filing of this Complaint and ending on the date as determined by the Court (“CLASS
21 PERIOD”). The members of the class are so numerous that joinder of all class members is
22 impractical. PLAINTIFF reserves the right to amend the following class definitions before the
23 Court determines whether class certification is appropriate, or thereafter upon leave of Court:

24 9. PLAINTIFF brings this Class Action on behalf of herself and on behalf of the
25 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
26 incurred during the CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice
27 which (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant
28

1 meal and rest periods or an additional hour of pay at the regular rate of compensation in *lieu*
2 thereof in violation of California Labor Code Sections 226.7(c), 512(a) and the applicable
3 Industrial Welfare Commission Wage Order, (2) failed to pay PLAINTIFF and the
4 CALIFORNIA CLASS for all hours worked in violation of, *inter alia*, California Labor Code
5 Sections 510, 1194, 1197, and 1197.1, (3) failed to PAY PLAINTIFF and the CALIFORNIA
6 CLASS at the correct regular rate of pay for overtime, sick pay and meal and rest period
7 premiums, and (4) failed to provide accurate itemized wage statements in violation of California
8 Labor Code Sections 226 and 226.3.

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

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

17 **JURISDICTION AND VENUE**

18 12. The Superior Court of the State of California has jurisdiction in this matter because
19 DEFENDANT, a California limited liability company, and DOES 1 through 50 inclusive
20 (hereinafter "DEFENDANT" or "DEFENDANTS"), are qualified to do business in California and
21 regularly conduct business in California. Further, no federal question is at issue because the claims
22 are based solely on California law.

23 13. Venue is proper in this judicial district and the County of San Bernardino,
24 California because DEFENDANTS maintain offices and facilities and transact business in the
25 County of San Bernardino, and because DEFENDANTS' illegal payroll policies and practices
26 which are the subject of this action were applied, at least in part, to residents of the County of San
27 Bernardino.

28 ///

THE CONDUCT

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

A. Meal Period Violations

15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's demanding work requirements and DEFENDANTS' understaffing, DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.

1 Indeed, there were rarely days where PLAINTIFF and other CALIFORNIA CLASS Members
2 would even receive a partial lunch. Further, PLAINTIFF and other CALIFORNIA CLASS
3 Members were required to return to work early from their meal breaks in order to abide by
4 DEFENDANTS' policy that its employees are to resume their work exactly within thirty (30)
5 minutes after their meal breaks began. As such, PLAINTIFF and other CALIFORNIA CLASS
6 Members were required to forfeit full thirty (30) minute meal breaks. As a result, the PLAINTIFF
7 and other CALIFORNIA CLASS Members forfeited minimum wage and overtime wages by
8 regularly working without their time being accurately recorded and without compensation at the
9 applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not
10 to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced
11 by DEFENDANTS' business records.

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

26 **B. Rest Period Violations**

27 17. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
28 CALIFORNIA CLASS Members were also required from time to time to work in excess of four

(4) hours without being provided ten (10) minute rest periods as a result of their rigorous work schedules and DEFENDANTS' inadequate staffing. Further, for the same reasons 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 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 required to remain on the premises, on duty, and on call. 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 from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

C. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Sick Pay

18. 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.

19. 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.

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

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

25 22. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
27 matter of company policy, practice and procedure, intentionally and knowingly failed to
28 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate

1 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
2 This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the
3 payment of the correct overtime and double time compensation, meal and rest period premiums,
4 and sick pay as required by California law which allowed DEFENDANTS to illegally profit and
5 gain an unfair advantage over competitors who complied with the law. To the extent equitable
6 tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANTS,
7 the CLASS PERIOD should be adjusted accordingly.

8 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

9 23. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
10 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
11 CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required
12 PLAINTIFF and the other members of the CALIFORNIA CLASS to perform off-the-clock work.
13 Notwithstanding, from time-to-time DEFENDANTS failed to pay PLAINTIFF and other
14 members of the CALIFORNIA CLASS necessary wages for attending for performing work at
15 DEFENDANTS' direction, request and benefit, while off-the clock pre-shift and during meal
16 periods.

17 24. During the CLASS PERIOD, from time-to-time DEFENDANTS required
18 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work,
19 including but not limited to, submitting to Covid-19 health screenings and temperature checks.

20 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required
21 PLAINTIFF and other members of the CALIFORNIA CLASS to remain available for work-
22 related communications while off-the-clock.

23 26. DEFENDANTS directed and directly benefited from the uncompensated off-the-
24 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

25 27. DEFENDANTS controlled the work schedules, duties, protocols, applications,
26 assignments and employment conditions of PLAINTIFF and the other members of the
27 CALIFORNIA CLASS.
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1 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
2 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
3 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
4 wages earned and owed for all the work they performed, including off-the-clock work.

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

7 30. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
8 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
9 owed for the off-the-clock work activities and their required meal periods. Because PLAINTIFF
10 and the other members of the CALIFORNIA CLASS typically worked over 40 hours in a
11 workweek, and more than eight (8) hours per day, DEFENDANTS' policies and practices also
12 deprived them of overtime pay.

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

15 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
16 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
17 for the time spent submitting to Covid-19 health screenings and temperature
18 checks. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members
19 of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is
20 evidenced by DEFENDANTS' business records.

21 **E. Wage Statement Violations**

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

34. From time to time during the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, were paid inaccurate missed meal and rest period premiums, were paid overtime in the same pay period where they earned a bonus, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods. Further, from time to time during the CLASS PERIOD, DEFENDANTS failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements that provided the accurate total hours worked in each pay period, in violation of Cal. Lab. Code § 226(a)(2).

35. In addition to the violations described above, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226, and specifically DEFENDANTS failed to include the correct total number of hours worked on the wage statements.

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

F. Unlawful Rounding Violations

37. 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

1 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
2 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
3 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
4 these employees for all their time worked, including the applicable overtime compensation for
5 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
6 time to time, forfeited compensation for their time worked by working without their time being
7 accurately recorded and without compensation at the applicable overtime rates.

8 38. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
9 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
10 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
11 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
12 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
13 off-duty meal break. Additionally, DEFENDANTS' unlawful rounding policy and practice
14 caused PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by
15 DEFENDANTS for more than ten (10) hours during a shift without receiving a second off-duty
16 meal break.

17 39. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
18 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
19 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
20 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
21 provide PLAINTIFF with a second off-duty meal period each workday in which she was required
22 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
23 with a rest break, they required PLAINTIFF to remain on-duty and on-call, for the rest break.
24 DEFENDANTS' policy caused PLAINTIFF to remain on-call and on-duty during what was
25 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
26 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
27 and practice. Moreover, DEFENDANTS also provided PLAINTIFF with a paystub that failed to
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1 comply with Cal. Lab. Code § 226. To date, DEFENDANTS have not fully paid PLAINTIFF
2 the minimum, overtime and double time compensation still owed to her or any penalty wages
3 owed to her under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually
4 does not exceed the sum or value of \$75,000.

5 **G. CLASS ACTION ALLEGATIONS**

6 40. PLAINTIFF brings the First through Seventh Causes of Action as a class action
7 pursuant to California Code of Civil Procedure § 382 on behalf of the CALIFORNIA CLASS,
8 defined, *supra*, that who worked for Defendant General Motors LLC and/or Defendant General
9 Motors Company (the “CALIFORNIA CLASS”) during the period beginning four years prior to
10 the filing of the Complaint and ending on a date determined by the Court (“CLASS PERIOD”).

11 41. PLAINTIFF and the other members of the CALIFORNIA CLASS have uniformly
12 been deprived of wages and penalties from unpaid wages earned and due, including but not
13 limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period
14 premiums, illegal meal and rest period policies, failure to separately compensate rest periods,
15 failure to provide accurate itemized wage statements, failure to maintain required records, and
16 interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

17 42. The members of the class are so numerous that joinder of all class members is
18 impractical.

19 43. Common questions of law and fact regarding DEFENDANTS’ conduct, including
20 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to
21 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
22 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
23 provide legally compliant meal and rest periods, failure to reimburse business expenses, failure
24 to provide accurate itemized wage statements accurately, and failure to ensure they are paid at
25 least minimum wage and overtime, exist as to all members of the class and predominate over any
26 questions affecting solely any individual members of the class. Among the questions of law and
27 fact common to the class are:
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- 1 a. Whether DEFENDANTS maintained legally compliant
2 meal period policies and practices;
- 3 b. Whether DEFENDANTS maintained legally compliant rest
4 period policies and practices;
- 5 c. Whether DEFENDANTS failed to pay PLAINTIFF and
6 members of the CALIFORNIA CLASS accurate premium payments
7 for missed meal and rest periods;
- 8 d. Whether DEFENDANTS failed to pay PLAINTIFF and
9 members of the CALIFORNIA CLASS accurate overtime wages;
- 10 e. Whether DEFENDANTS failed to pay PLAINTIFF and
11 members of the CALIFORNIA CLASS accurate sick pay wages;
- 12 f. Whether DEFENDANTS failed to pay PLAINTIFF and
13 members of the CALIFORNIA CLASS accurate meal and rest
14 period premiums;
- 15 g. Whether DEFENDANTS failed to pay PLAINTIFF and
16 members of the CALIFORNIA CLASS at least minimum wage for
17 all hours worked;
- 18 h. Whether DEFENDANTS issued legally compliant wage
19 statements;
- 20 i. Whether DEFENDANTS committed an act of unfair
21 competition by systematically failing to record and pay PLAINTIFF
22 and the other members of the CALIFORNIA CLASS for all time
23 worked;
- 24 j. Whether DEFENDANTS committed an act of unfair
25 competition by systematically failing to record all meal and rest
26 breaks missed by PLAINTIFF and other CALIFORNIA CLASS
27 Members, even though DEFENDANTS enjoyed the benefit of this
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work, required employees to perform this work and permits or suffers to permit this work; and

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.

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

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

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

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

48. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests of the other member of the CALIFORNIA CLASS.

49. There is a strong community of interest among PLAINTIFF and the members of the CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

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

51. 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

1 the class individually to redress the wrongs done to them. Without class certification and
2 determination of declaratory, injunctive, statutory and other legal questions within the class
3 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS
4 will create the risk of:

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

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

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16 **FIRST CAUSE OF ACTION**

17 **For Unlawful Business Practices**

18 **[Cal. Bus. And Prof. Code §§ 17200, et seq.]**

19 (By PLAINTIFF, the CALIFORNIA CLASS and Against All Defendants)

20 52. 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 53. DEFENDANTS are a “person” as that term is defined under Cal. Bus. and Prof.
24 Code § 17021.

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

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

55. By the conduct alleged herein, DEFENDANTS have engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 226, 226.3, 226.7, 246, 510, 512, 515, 558, 1194, 1197, 1197.1, 1198, 1198.5, and 2802 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

57. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent in that DEFENDANTS' uniform policy and practice failed to, *inter alia*, provide the legally mandated meal and rest periods, the required accurate amount of compensation for missed meal and rest periods, overtime, and minimum wages owed, provide accurate itemized wage statements, due to a systematic business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.

1 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
2 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

7 59. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
8 unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to
9 provide legally required uninterrupted duty-free meal breaks to PLAINTIFF and the other
10 members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

3 64. PLAINTIFF and the other members of the CALIFORNIA CLASS were further
4 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair
5 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
6 engaging in any unlawful and unfair business practices in the future.

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

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17 **SECOND CAUSE OF ACTION**

18 **For Failure to Pay Overtime Compensation**

19 **[Cal. Lab. Code §§ 510, *et seq.*]**

20 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

21 66. 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 67. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period
25 beginning four years prior to the filing of the Complaint and the present (“LABOR CLASS
26 PERIOD”) bring a claim for DEFENDANTS’ willful and intentional violations of the California
27 Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to
28 pay these employees for all overtime worked, including, work performed in excess of eight (8)

1 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
2 workweek.

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

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

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

13 71. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS
14 members were required by DEFENDANTS to work for DEFENDANTS and were not paid for
15 all the time they worked or were not accurately compensated for all overtime hours worked.

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

23 73. In committing these violations of the California Labor Code, DEFENDANTS
24 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
25 consequently underpaid the actual time worked by PLAINTIFF and other members of the
26 CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid the payment of all
27 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
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Commission requirements and other applicable laws and regulations.

74. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein, PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for all overtime worked.

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

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

77. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work, and did in fact work, overtime as to which DEFENDANTS failed to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANTS' business records and witnessed by employees.

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

1 79. DEFENDANTS knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
3 DEFENDANTS systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
5 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

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

26 **THIRD CAUSE OF ACTION**

27 **For Failure to Pay Minimum Wages**

[Cal. Lab. Code §§ 1194, 1197 and 1197.1]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

82. 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.

83. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the LABOR CLASS PERIOD.

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

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

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

87. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

88. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF

1 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

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

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

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

26 94. In performing the acts and practices herein alleged in violation of California labor
27 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
28

1 and provide them with the requisite compensation, DEFENDANTS acted and continues to act
2 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
3 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
4 consequences to them, and with the despicable intent of depriving them of their property and
5 legal rights, and otherwise causing them injury in order to increase company profits at the
6 expense of these employees.

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

18 **FOURTH CAUSE OF ACTION**

19 **For Failure to Provide Required Meal Periods**

20 **[Cal. Lab. Code §§ 226.7 & 512]**

21 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

25 97. During the LABOR CLASS PERIOD, from time to time, DEFENDANTS failed
26 to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
27 CALIFORNIA CLASS members as required by the applicable Wage Order and Labor Code.
28

1 The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS members did not
2 prevent these employees from being relieved of all of their duties for the legally required off-
3 duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
4 CALIFORNIA CLASS members were from time to time not fully relieved of duty by
5 DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide
6 PLAINTIFF and the CALIFORNIA CLASS members with legally required meal breaks prior to
7 their fifth (5th) hour of work is evidenced by DEFENDANTS' business records from time to
8 time. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS
9 members with a second off-duty meal period in some workdays in which these employees were
10 required by DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other
11 members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional
12 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

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

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

21 **FIFTH CAUSE OF ACTION**

22 **For Failure to Provide Required Rest Periods**

23 **[Cal. Lab. Code §§ 226.7 & 512]**

24 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

25 100. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
26 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
27 Complaint.
28

101. During the LABOR CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS members were from time to time 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 from time to time. 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 DEFENDANTS and DEFENDANTS' managers.

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

103. 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

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)

104. PLAINTIFFS, 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.

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

1. gross wages earned,

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,
3. the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
4. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
5. net wages earned,
6. the inclusive dates of the period for which the employee is paid,
7. the name of the employee and her or her social security number, except that by January 1, 2008, only the last four digits of her or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
8. the name and address of the legal entity that is the employer, and
9. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

106. When PLAINTIFF and the other CALIFORNIA CLASS members were not compensated for all wages due to them for their off-the-clock work, and for their missed meal and rest breaks, and for overtime, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. As a result, DEFENDANTS provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violate Cal. Lab. Code § 226. Further, from time to time during the CLASS PERIOD, DEFENDANTS failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements that

provided the accurate total hours worked in each pay period, in violation of Cal. Lab. Code § 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

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

SEVENTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)

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

109. Cal. Lab. Code § 200 provides, in relevant part, that:

As used in this article:

(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.

(b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

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

111. Cal. Lab. Code § 202 provides, in relevant part, that: "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention 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."

112. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members' employment contract. Cal. Lab. Code § 203 provides, in relevant part, that: "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."

113. The employment of PLAINTIFF and many CALIFORNIA CLASS Members has terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

114. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated, PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CALIFORNIA CLASS

1 PERIOD and demands an accounting and payment of all wages due, plus interest and statutory
2 costs as allowed by law.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly
5 and severally, as follows:

6 1. On behalf of the CALIFORNIA CLASS:

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

9 B) An order temporarily, preliminarily and permanently enjoining and restraining
10 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

11 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully
12 withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA
13 CLASS;

14 D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund
15 for restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to
16 the other members of the CALIFORNIA CLASS;

17 E) That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
18 of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ.
19 Proc. § 382;

20 1. Compensatory damages, according to proof at trial, including compensatory
21 damages for overtime compensation due PLAINTIFF and the other members of
22 the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS
23 PERIOD plus interest thereon at the statutory rate;

24 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
25 which a violation occurs and one hundred dollars (\$100) per each member of the
26 CALIFORNIA CLASS for each violation in a subsequent pay period, not
27
28

1 exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of
2 costs for violation of Cal. Lab. Code § 226;

3 3. Meal and rest period compensation pursuant to California Labor Code Sections
4 226.7 and 512 and the applicable IWC Wage Order;

5 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
6 1197; and,

7 2. On all claims:

8 A) An award of interest, including prejudgment interest at the legal rate;

9 B) Such other and further relief as the Court deems just and equitable; and,

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

12 Dated: March 3, 2022

JCL LAW FIRM, APC



14
15 Eduardo Garcia
16 Attorney for PLAINTIFF

17
18 **DEMAND FOR A JURY TRIAL**

19 PLAINTIFF demands a jury trial on issues triable to a jury.
20

21 DATED: March 3, 2022

JCL LAW FIRM, APC

23
24 
25 Eduardo Garcia
26 Attorney for PLAINTIFF
27
28

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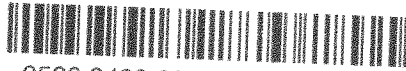
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