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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

TYSHON HARMON, an individual, on behalf
 of himself, and on behalf of all persons
 similarly situated,

Plaintiffs,

v.

SUPERPEDESTRIAN, INC., a Delaware
 corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: 23STCV17513

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

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

FILED
 Superior Court of California
 County of Los Angeles

09/12/2023

David W. Slayton, Executive Officer / Clerk of Court

By: M. Arellanes Deputy

- 1 6) FAILURE TO PROVIDE WAGES WHEN
2 DUE IN VIOLATION OF CAL. LAB.
3 CODE §§ 201, 202 AND 203;
4 7) FAILURE TO PROVIDE ACCURATE
5 ITEMIZED STATEMENTS IN
6 VIOLATION OF CAL. LAB. CODE § 226;
7 8) FAILURE TO REIMBURSE EMPLOYEES
8 FOR REQUIRED EXPENSES IN
9 VIOLATION OF CAL. LAB. CODE § 2802.
10 9) VIOLATIONS OF THE PRIVATE
11 ATTORNEY GENERAL ACT AT LABOR
12 CODE SECTIONS 2698 *ET SEQ.*

13 **DEMAND FOR A JURY TRIAL**

14 PLAINTIFF TYSHON HARMON (“PLAINTIFF”), an individual, on behalf of himself and
15 all other similarly situated current and former employees, allege on information and belief, except
16 for his own acts and knowledge which are based on personal knowledge, the following:

17 **PRELIMINARY ALLEGATIONS**

18 1. Defendant SUPERPEDESTRIAN, INC. (“DEFENDANT” and/or
19 “DEFENDANTS”) is a Delaware corporation that at all relevant times mentioned herein
20 conducted and continues to conduct substantial and regular business throughout California.

21 2. DEFENDANT operates a transportation robotics company that develops
22 micromobility vehicles in California, including in the county of Los Angeles where PLAINTIFF
23 worked.

24 3. PLAINTIFF was employed by DEFENDANT in California from November of
25 2021 to August of 2022 as a non-exempt employee, paid an hourly basis and entitled to the legally
26 required meal and rest periods and payment of minimum and overtime wages due for all time
27 worked.

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

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

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

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

7. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other members of the

1 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
2 Defendants' agents, servants and/or employees.

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

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

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

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

22 **JURISDICTION AND VENUE**

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

27 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs

1 the CALIFORNIA CLASS across California, including in this County, and committed the
2 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

3 **THE CONDUCT**

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

23 **A. Meal Period Violations**

24 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
25 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
27 all the time the employee is suffered or permitted to work. From time to time during the CLASS
28 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work

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

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

1 **B. Rest Period Violations**

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

19 **C. Wage Statement Violations**

20 18. California Labor Code Section 226 required an employer to furnish its employees
21 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
22 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
23 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
24 name of the employee and only the last four digits of the employee's social security number or an
25 employee identification number other than a social security number, (8) the name and address of
26 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
27 period and the corresponding number of hours worked at each hourly rate by the employee.
28

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

9 20. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
10 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
11 Cal. Lab. Code § 226.

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

16 **D. Unreimbursed Business Expenses**

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

27 23. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
28 Members as a business expense, were required by DEFENDANTS to use their own personal cell

1 phones and incur personal expenses for the maintenance of their uniforms as a result of and in
2 furtherance of their job duties as employees for DEFENDANTS but were not reimbursed or
3 indemnified by DEFENDANTS for the costs associated with the use of their own personal cell
4 phones and incur personal expenses for the maintenance of their uniforms for DEFENDANTS'
5 benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
6 DEFENDANTS to use their personal cellular phones to conduct work related business. As a result,
7 in the course of their employment with DEFENDANT the PLAINTIFF and other members of the
8 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
9 limited to, costs related to the use of their own personal cell phones and incur personal expenses for
10 the maintenance of their uniforms all on behalf of and for the benefit of DEFENDANTS.

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

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

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

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

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

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

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

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

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

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

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

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

27 34. State law provides that employees must be paid overtime at one-and-one-half times
28 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were

1 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
2 employee's performance.

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

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

27 37. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a

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

10 **G. Unlawful Rounding Practices**

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

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

1 **H. Timekeeping Manipulation**

2 40. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
3 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
4 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
5 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
6 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally
7 alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and other
8 members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours
9 worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed
10 rest break.

11 41. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
12 time-to-time, forfeited time worked by working without their time being accurately recorded and
13 without compensation at the applicable pay rates.

14 42. The mutability of the timekeeping system also allowed DEFENDANTS to alter
15 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
16 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
17 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
18 were not at all times provided an off-duty meal break. This practice is a direct result of
19 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30) minute
20 off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

21 43. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
22 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit for
23 the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to
24 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in
25 accordance with applicable law is evidenced by DEFENDANTS' business records.

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

27 44. Pursuant to California Labor Code section 204, PLAINTIFF and the
28 CALIFORNIA CLASS members were entitled to timely payment of wages during their
employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not

1 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
2 meal period premium wages, and rest period premium wages within permissible time period.

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

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

14 **J. Unlawful Deductions**

15 47. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
16 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
17 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
18 DEFENDANTS violated Labor Code § 221.

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

1 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
2 comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse PLAINTIFF for
3 required business expenses related to the use of his personal cell phone and for personal expenses
4 incurred for the maintenance of his uniforms in violation of Cal. Lab. Code § 2802. To date,
5 DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time
6 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.
7 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
8 \$75,000.

9 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

3 54. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
4 PLAINTIFF have the same interests as the other members of the class.

5 55. PLAINTIFF will fairly and adequately represent and protect the interests of the
6 CALIFORNIA CLASS Members.

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

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

11 58. There is a strong community of interest among PLAINTIFF and the members of
12 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
13 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
14 sustained.

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

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

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

1 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
2 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
3 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

18 68. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
19 unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
20 other members of the CALIFORNIA CLASS to be underpaid during their employment with
21 DEFENDANT.

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

26 70. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
28 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

3 71. PLAINTIFF further demands on behalf of himself 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 as required by law.

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

12 73. 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 74. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
18 and do, seek such relief as may be necessary to restore to them the money and property which
19 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
20 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
21 business practices, including earned but unpaid wages for all time worked.

22 75. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
23 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
24 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
25 engaging in any unlawful and unfair business practices in the future.

26 76. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
28 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANT is restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **Failure To Pay Minimum Wages**

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

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

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

12 78. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
13 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
14 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
15 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

23 82. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
24 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
25 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
26 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
27 CALIFORNIA CLASS.

1 83. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
3 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
4 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

11 85. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
12 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
13 minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **Failure To Pay Overtime Compensation**

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

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

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

27 92. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
28 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial

1 Welfare Commission requirements for DEFENDANT's failure to pay these employees for all
2 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
3 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

16 97. DEFENDANT's 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 98. In committing these violations of the California Labor Code, DEFENDANT
24 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
25 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
26 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
27 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
28 regulations.

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

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

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

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

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

27 104. DEFENDANT knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were undercompensated for their time worked.

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

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

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

113. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code § 226)**

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

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

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

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

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

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

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

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

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

1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code § 203)**

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

5 120. 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.

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

9 As used in this article:

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

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

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

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

29 124. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS
30 Members' employment contract.

31 125. Cal. Lab. Code § 203 provides:

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

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

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

EIGHTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES

(Cal. Lab. Code §§ 2802)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all Defendants

128. 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.

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

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

130. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT'S benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which included, but were not limited to, costs related to using their own personal cell phones and incur personal expenses for the maintenance of their uniforms all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS

1 Members were required by DEFENDANT to use their personal cellular phones for work-related
2 business. DEFENDANT’S uniform policy, practice and procedure was to not reimburse
3 PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting from using their
4 own personal cell phones and incur personal expenses for the maintenance of their uniforms for
5 DEFENDANT within the course and scope of their employment for DEFENDANT. These
6 expenses were necessary to complete their principal job duties. DEFENDANT are estopped by
7 DEFENDANT’S conduct to assert any waiver of this expectation. Although these expenses were
8 necessary expenses incurred by PLAINTIFF and the CALIFORNIA members, DEFENDANT
9 failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these
10 expenses as an employer is required to do under the laws and regulations of California.

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

15 **NINTH CAUSE OF ACTION**

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

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

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

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

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

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.

134. PLAINTIFF, 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 himself and all individuals classified as all non-exempt employees who worked for DEFENDANTS in California during the time period of July 6, 2022, until the present (the "AGGRIEVED EMPLOYEES").

135. On July 6, 2023, PLAINTIFF 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. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff 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.

136. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANTS (a) failed to pay AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct regular rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, and (e) 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, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004

1 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
2 and the other AGGRIEVED EMPLOYEES.

3 137. For all provisions of the Labor Code for which civil penalty is not specifically
4 provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100)
5 for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred
6 dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation.
7 PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable
8 attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code
9 Section 2699(g)(1).

10 138. To the extent that any of the conduct and violations alleged herein did not affect
11 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
12 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
13 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
14 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor
15 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
16 committed by that employer."], Emphasis added, reh'g denied (June 13, 2018).).

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27 **PRAYER FOR RELIEF**
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1 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and
2 severally, as follows:

3 1. On behalf of the CALIFORNIA CLASS:

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

14 2. On behalf of the CALIFORNIA CLASS:

- 15 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth
16 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
17 to Cal. Code of Civ. Proc. § 382;
18 b. Compensatory damages, according to proof at trial, including compensatory
19 damages for overtime compensation due to PLAINTIFF and the other members of
20 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
21 thereon at the statutory rate;
22 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
23 the applicable IWC Wage Order;
24 d. 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 exceeding
27 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
28 violation of Cal. Lab. Code § 226

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

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

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

9 4. On all claims:

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

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

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

14
15 DATED: September 12, 2023

ZAKAY LAW GROUP, APLC

17 By: 
18 Shani O. Zakay
19 Attorney for PLAINTIFF

20 **DEMAND FOR A JURY TRIAL**

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

22 DATED: September 12, 2023

ZAKAY LAW GROUP, APLC

24 By: 
25 Shani O. Zakay
26 Attorney for PLAINTIFF
27
28

EXHIBIT 1



Client # 63701

July 6, 2023

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

SUPERPEDESTRIAN, INC.

c/o TRAC - The Registered Agent Company
7801 Folsom Blvd.
Sacramento, CA 95826

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0625 6794 73

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

Dear Sir/Madam:

Our offices represent Plaintiff TYSHON HARMON ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant SUPERPEDESTRIAN, INC. ("Defendant"). Plaintiff was employed by Defendant from November of 2021 to August of 2022, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

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

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

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to

Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

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

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

Sincerely,

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

Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

TYSHON HARMON, an individual, on behalf
of himself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

SUPERPEDESTRIAN, INC., a Delaware
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

- LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant SUPERPEDESTRIAN, INC. (“DEFENDANT” and/or “DEFENDANTS”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANT operates a transportation robotics company that develops micromobility vehicles in California, including in the county of Los Angeles where PLAINTIFF worked.

3. PLAINTIFF was employed by DEFENDANT in California from November of 2021 to August of 2022 as a non-exempt employee, paid an hourly basis and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

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

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

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

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

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

1 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
2 Defendants' agents, servants and/or employees.

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

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

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

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

22 **JURISDICTION AND VENUE**

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

27 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs

1 the CALIFORNIA CLASS across California, including in this County, and committed the
2 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

3 **THE CONDUCT**

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

23 **A. Meal Period Violations**

24 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
25 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
27 all the time the employee is suffered or permitted to work. From time to time during the CLASS
28 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work

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

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

1 **B. Rest Period Violations**

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

19 **C. Wage Statement Violations**

20 18. California Labor Code Section 226 required an employer to furnish its employees
21 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
22 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
23 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
24 name of the employee and only the last four digits of the employee's social security number or an
25 employee identification number other than a social security number, (8) the name and address of
26 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
27 period and the corresponding number of hours worked at each hourly rate by the employee.
28

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

9 20. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
10 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
11 Cal. Lab. Code § 226.

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

16 **D. Unreimbursed Business Expenses**

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

27 23. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
28 Members as a business expense, were required by DEFENDANTS to use their own personal cell

1 phones and incur personal expenses for the maintenance of their uniforms as a result of and in
2 furtherance of their job duties as employees for DEFENDANTS but were not reimbursed or
3 indemnified by DEFENDANTS for the costs associated with the use of their own personal cell
4 phones and incur personal expenses for the maintenance of their uniforms for DEFENDANTS'
5 benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
6 DEFENDANTS to use their personal cellular phones to conduct work related business. As a result,
7 in the course of their employment with DEFENDANT the PLAINTIFF and other members of the
8 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
9 limited to, costs related to the use of their own personal cell phones and incur personal expenses for
10 the maintenance of their uniforms all on behalf of and for the benefit of DEFENDANTS.

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

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

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

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

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

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

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

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

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

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

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

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

27 34. State law provides that employees must be paid overtime at one-and-one-half times
28 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were

1 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
2 employee's performance.

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

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

27 37. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a

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

10 **G. Unlawful Rounding Practices**

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

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

28 **H. Timekeeping Manipulation**

1 40. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
2 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
3 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
4 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
5 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally
6 alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and other
7 members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours
8 worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed
9 rest break.

10 41. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
11 time-to-time, forfeited time worked by working without their time being accurately recorded and
12 without compensation at the applicable pay rates.

13 42. The mutability of the timekeeping system also allowed DEFENDANTS to alter
14 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
15 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
16 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
17 were not at all times provided an off-duty meal break. This practice is a direct result of
18 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30) minute
19 off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

20 43. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
21 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit for
22 the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to
23 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in
24 accordance with applicable law is evidenced by DEFENDANTS' business records.

25 **I. Violations for Untimely Payment of Wages**

26 44. Pursuant to California Labor Code section 204, PLAINTIFF and the
27 CALIFORNIA CLASS members were entitled to timely payment of wages during their
28 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not

1 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
2 meal period premium wages, and rest period premium wages within permissible time period.

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

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

14 **J. Unlawful Deductions**

15 47. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
16 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
17 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
18 DEFENDANTS violated Labor Code § 221.

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

1 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
2 comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse PLAINTIFF for
3 required business expenses related to the use of his personal cell phone and for personal expenses
4 incurred for the maintenance of his uniforms in violation of Cal. Lab. Code § 2802. To date,
5 DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time
6 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.
7 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
8 \$75,000.

9 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

1 53. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
2 a result of DEFENDANT's conduct and actions alleged herein.

3 54. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
4 PLAINTIFF have the same interests as the other members of the class.

5 55. PLAINTIFF will fairly and adequately represent and protect the interests of the
6 CALIFORNIA CLASS Members.

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

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

11 58. There is a strong community of interest among PLAINTIFF and the members of
12 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
13 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
14 sustained.

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

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

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

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.

61. 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 DEFENDANT.

FIRST CAUSE OF ACTION

Unlawful Business Practices

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

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

62. 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.

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

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

65. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and

1 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
2 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
3 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

18 68. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
19 unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
20 other members of the CALIFORNIA CLASS to be underpaid during their employment with
21 DEFENDANT.

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

26 70. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
27 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
28 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

3 71. PLAINTIFF further demands on behalf of himself 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 as required by law.

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

12 73. 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 74. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
18 and do, seek such relief as may be necessary to restore to them the money and property which
19 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
20 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
21 business practices, including earned but unpaid wages for all time worked.

22 75. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
23 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
24 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
25 engaging in any unlawful and unfair business practices in the future.

26 76. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
28 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANT is restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **Failure To Pay Minimum Wages**

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

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

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

12 78. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
13 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
14 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
15 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

23 82. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
24 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
25 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
26 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
27 CALIFORNIA CLASS.

1 83. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
3 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
4 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

11 85. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
12 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
13 minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **Failure To Pay Overtime Compensation**

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

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

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

27 92. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
28 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial

1 Welfare Commission requirements for DEFENDANT's failure to pay these employees for all
2 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
3 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

16 97. DEFENDANT's 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 98. In committing these violations of the California Labor Code, DEFENDANT
24 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
25 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
26 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
27 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
28 regulations.

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

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

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

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

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

27 104. DEFENDANT knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were undercompensated for their time worked.

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

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

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

24 **FOURTH CAUSE OF ACTION**

25 **Failure To Provide Required Meal Periods**

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

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

114. 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.

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1 117. When DEFENDANT did not accurately record PLAINTIFF'S and other
2 CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed
3 meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal.
4 Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA
5 CLASS Members with complete and accurate wage statements which failed to show, among other
6 things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked
7 and all applicable hourly rates in effect during the pay period and the corresponding amount of
8 time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal
9 and rest periods.

10 118. In addition to the foregoing, DEFENDANT failed to provide itemized wage
11 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
12 requirements of California Labor Code Section 226.

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

24 **SEVENTH CAUSE OF ACTION**

25 **Failure To Pay Wages When Due**

26 **(Cal. Lab. Code § 203)**

27 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**
28

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

4 121. Cal. Lab. Code § 200 provides that:

5 As used in this article:

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

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

15 123. Cal. Lab. Code § 202 provides, in relevant part, that:

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

25 124. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS
26 Members' employment contract.

27 125. Cal. Lab. Code § 203 provides:

28 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.

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

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

EIGHTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES

(Cal. Lab. Code §§ 2802)

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

128. 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.

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

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

130. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT'S benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which included, but were not limited to, costs related to using their own personal cell phones and incur personal expenses for the maintenance of their uniforms all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cellular phones for work-related business. DEFENDANT'S uniform policy, practice and procedure was to not reimburse

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

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

13 **PRAYER FOR RELIEF**

14 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and
15 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 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
21 c. An order requiring DEFENDANT to pay all overtime wages and all sums
22 unlawfully withheld from compensation due to PLAINTIFF and the other members
23 of the CALIFORNIA CLASS; and
24 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
25 for restitution of the sums incidental to DEFENDANT's violations due to
26 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

27 2. On behalf of the CALIFORNIA CLASS:

- 28 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth

Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

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

3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: July __, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

DATED: July __, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF