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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN

JERMELL JONES, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

MARSHALL E. HELM CORP., a California
corporation; and DOES 1 through 50, Inclusive;

Defendants.

Case No. BCV-21-102356

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

THE APPLICABLE IWC WAGE ORDER;

6. FAILURE TO REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203;
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.]

DEMAND FOR JURY TRIAL

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

THE PARTIES

1. Defendant MARSHALL E. HELM CORP. (dba Greenlawn Funeral Homes) (“DEFENDANT” and/or “DEFENDANTS”) is a California corporation that at all relevant times owns and operates funeral homes, mortuaries, and cemeteries in the State of California.

2. 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 First Amended Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief allege, that the Defendants named in this First Amended Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

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

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

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

18 6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee from February
19 of 2015 to October 16, 2020, paid on an hourly basis, and entitled to the legally required meal and rest
20 periods and payment of minimum wages, reimbursement for business expenses, and overtime wages
21 due for all time worked.

22 7. PLAINTIFF brings this Class Action on behalf of himself and on behalf of all of
23 DEFENDANTS' current and former non-exempt California employees (the "CALIFORNIA CLASS")
24 at any time during the period beginning four years from the date of the filing of the original Complaint
25 and ending on a date determined by the Court (the "CLASS PERIOD"). The amount in controversy
26 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
27 (\$5,000,000.00). PLAINTIFF reserves the right to amend the following class definitions before the
28 Court determines whether class certification is appropriate, or thereafter upon leave of Court:

8. PLAINTIFF brings this Class Action on behalf of himself and on behalf of the CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of California Labor Code Sections 226.7(c) and the applicable Industrial Welfare Commission Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, (3) failed to reimburse PLAINTIFF and the CALIFORNIA CLASS for required expenses in violation of California Labor Code Section 2802, and (4) failed to provide accurate itemized wage statements in violation of California Labor Code Sections 226 and 226.3.

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

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

JURISDICTION AND VENUE

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

12. Venue is proper in this Court pursuant to California Code of Civil Procedure, sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, and DEFENDANTS (i) currently maintain and at all relevant times, maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

1 **THE CONDUCT**

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

19 **A. Meal Period Violations**

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

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

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

26 **B. Rest Period Violations**

27 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
28 CLASS members were also required from time to time to work in excess of four (4) hours without

1 being provided ten (10) minute rest periods as a result of their rigorous work schedule, being required
2 to perform cremations and manage employees, and DEFENDANTS' inadequate staffing. Further, for
3 the same reasons these employees were denied their first rest periods of at least ten (10) minutes for
4 some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period
5 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to
6 time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten
7 (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
8 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty, on the
9 premises, and/or on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not
10 provided with one-hour wages *in lieu* thereof. Further, PLAINTIFF and CALIFORNIA CLASS
11 Members were required to maintain cordless communication devices on them during their rest periods
12 and were expected to remain at the ready to respond to communications received on the devices, thereby
13 forfeiting off-duty rest periods. As a result of their rigorous work schedules, being required to perform
14 cremations and manage employees, and DEFENDANTS' inadequate staffing, PLAINTIFF and other
15 CALIFORNIA CLASS Members were from time to time denied their proper rest periods by
16 DEFENDANTS and DEFENDANTS' managers.

17 **C. Regular Rate Violation – Overtime, Sick Pay and Meal and Rest Period Premiums**

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

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

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

7 20. However, from-time-to-time, when calculating the regular rate of pay, in those pay
8 periods where PLAINTIFF and the CALIFORNIA CLASS Members worked overtime, or were paid
9 meal and/or rest period premiums, and earned this non-discretionary bonus or incentive
10 DEFENDANTS failed to accurately include the non-discretionary bonus compensation and/or
11 incentive paid as part of the employees' "regular rate of pay" and/or calculated all hours worked rather
12 than just all non-overtime hours worked. Further, when calculating the regular rate of pay in order to
13 pay sick pay to PLAINTIFF and the CALIFORNIA CLASS, DEFENDANTS failed to include the
14 incentive compensation as part of the employees' "regular rate of pay" for purposes of calculating sick
15 pay. Management and supervisors described the incentive/bonus program to potential and new
16 employees as part of the compensation package. As a matter of law, the incentive compensation
17 received by PLAINTIFF and other CALIFORNIA CLASS Members must be included in the "regular
18 rate of pay." The failure to do so has resulted in a systematic underpayment of overtime, meal and
19 rests period premiums, and sick pay to PLAINTIFF and other CALIFORNIA CLASS Members by
20 DEFENDANTS.

21 21. As a matter of law, the incentive and commission compensation received by
22 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly calculated
23 into the "regular rate of pay" for purposes of overtime compensation, meal and rest period premiums,
24 and sick pay. DEFENDANTS' failure to do so has resulted in DEFENDANTS' systematic
25 underpayment of overtime compensation, meal and rest period premiums, and sick pay to PLAINTIFF
26 and other CALIFORNIA CLASS members. Specifically, California Labor Code Section 246 mandates
27 that paid sick time for non-employees shall be calculated in the same manner as the regular rate of pay
28 for the workweek in which the non-exempt employee uses paid sick time, whether or not the employee

1 actually works overtime in that workweek. DEFENDANT'S conduct, as articulated herein, by failing
2 to include the incentive compensation as part of the "regular rate of pay" for purposes of sick pay
3 compensation was in violation of Cal. Lab. Code § 246.

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

14 **D. Unreimbursed Business Expenses**

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

25 24. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
26 CLASS Members were required by DEFENDANTS to use their own personal cell phones, use their
27 home internet, and provide and maintain their own uniforms as a result of and in furtherance of their
28 job duties as employees for DEFENDANTS. But for the use of their own personal cell phones, use of

1 their home internet, and uniforms, PLAINTIFF and the members of the CALIFORNIA CLASS could
2 not complete their essential job duties. Notwithstanding, DEFENDANTS did not reimburse or
3 indemnify PLAINTIFF or other CALIFORNIA CLASS Members for the cost associated with the use
4 of their own personal cell phones, home internet, or uniforms for DEFENDANTS' benefit.
5 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT
6 to use their personal cell phones and home internet for work related issues including communicating
7 with DEFENDANTS' supervisors and customers for work related duties, without being reimbursed for
8 said expenses. Further, DEFENDANTS required that PLAINTIFF and other CALIFORNIA CLASS
9 Members provide and maintain their own uniforms. DEFENDANTS provided PLAINTIFF and other
10 CALIFORNIA CLASS Members with an allowance to purchase uniforms. However, the allowance
11 was inadequate in light of the actual monies spent on the purchase and maintenance of uniforms and
12 DEFENDANTS failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the
13 additional costs associated with uniform purchases and maintenance. As a result, in the course of their
14 employment with DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS
15 incurred unreimbursed business expenses which included, but were not limited to, costs related to the
16 use of their personal cell phones, use of their home internet, and uniforms, all on behalf of and for the
17 benefit of DEFENDANTS.

18 **E. Wage Statement Violations**

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

27 26. From time to time during the CLASS PERIOD, when PLAINTIFF and other
28 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal

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

6 27. In addition to the violations described above, DEFENDANTS, from time to time, failed
7 to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply
8 with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other members of
9 the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
10 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional
11 payroll error due to clerical or inadvertent mistake.

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

13 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continue to
14 fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all hours
15 worked. Specifically, DEFENDANT from time-to-time required PLAINTIFF and the other members
16 of the CALIFORNIA CLASS to perform off-the-clock work. Notwithstanding, from time-to-time
17 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS necessary
18 wages for performing work at DEFENDANTS' direction, request, and benefit, while off-the clock.

19 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF
20 and other members of the CALIFORNIA CLASS to perform pre-shift work, including but not limited
21 to, arriving early to open the facility and assist customers. DEFENDANTS also required PLAINTIFF
22 and other CALIFORNIA CLASS Members to perform post-shift work, including but not limited to,
23 assisting colleagues, preparing the facility for new corpses, and preparing documentation. Further,
24 PLAINTIFF and other CALIFORNIA CLASS Members were required to remain on-call after working
25 hours and were required to respond to and assist DEFENDANTS' supervisors at all times and outside
26 of their scheduled shifts. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS
27 to have to work while off-the-clock.
28

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

3 27. DEFENDANTS controlled the work schedules, duties, protocols, applications,
4 assignments, and employment conditions of PLAINTIFF and the other members of the CALIFORNIA
5 CLASS.

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

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

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

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

19 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited
20 wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent
21 opening the facility, preparing documentation, and remaining on-call while off-the-
22 clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members of the
23 CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by
24 DEFENDANTS' business records.

25 **G. CLASS ACTION ALLEGATIONS**

26 33. PLAINTIFF brings the First through Ninth Causes of Action as a class action pursuant to
27 California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current and former non-
28 exempt California employees ("CALIFORNIA CLASS") during the period beginning four years prior

1 to the filing of the original Complaint and ending on a date determined by the Court (“CLASS
2 PERIOD”).

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

10 35. The members of the class are so numerous that joinder of all class members is impractical.

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

19 a. Whether DEFENDANTS maintained legally compliant meal period
20 policies and practices;

21 b. Whether DEFENDANTS maintained legally compliant rest period
22 policies and practices;

23 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
24 CALIFORNIA CLASS Members accurate premium payments for missed
25 meal and rest periods;

26 d. Whether DEFENDANTS failed to pay PLAINTIFF and the
27 CALIFORNIA CLASS Members accurate overtime wages;

28 e. Whether DEFENDANTS failed to pay PLAINTIFF and the

CALIFORNIA CLASS Member accurate sick pay;

f. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;

g. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;

h. Whether DEFENDANTS issued legally compliant wage statements;

i. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;

j. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;

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

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

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

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

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

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

1 of the other CALIFORNIA CLASS Members.

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

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

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

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

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

5 46. 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 First Amended
7 Complaint.

8 47. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
9 17021.

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

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

18 Cal. Bus. & Prof. Code § 17203.

19 49. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
20 CLASS Members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
21 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
22 “UCL”), by engaging and continuing to engage in business practices which violates California law,
23 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
24 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512,
25 1194, 1197, 1197.1, 1198, & 2802 for which this Court should issue declaratory and other equitable
26 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
27 held to constitute unfair competition, including restitution of wages wrongfully withheld.

28 50. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that

1 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous, or
2 substantially injurious to employees, and were without valid justification or utility for which this Court
3 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
4 Professions Code, including restitution of wages wrongfully withheld.

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

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

16 53. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair, and
17 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*,
18 provide the legally mandated meal and rest periods, the required accurate amount of compensation for
19 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage
20 statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
21 Labor Code.

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

26 55. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA
27 CLASS Member, one (1) hour of pay for each workday in which an off duty paid rest period was not
28 timely provided as required by law.

1 56. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
2 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
3 calculated overtime and missed meal and rest periods premiums.

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

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

15 59. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,
16 seek such relief as may be necessary to restore to them the money and property which DEFENDANTS
17 has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been
18 deprived, by means of the above described unlawful and unfair business practices, including earned but
19 unpaid wages for all overtime worked.

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

24 61. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
25 and/or adequate remedy at law that will end the unlawful and unfair business practices of
26 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result
27 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of
28 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic

1 harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair
2 business practices.

3 **SECOND CAUSE OF ACTION**

4 **For Failure to Pay Overtime Compensation**

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

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

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

10 63. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period
11 beginning four years prior to the filing of the original Complaint and the present (“CLASS PERIOD”)
12 bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and
13 the Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these employees
14 for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
15 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

25 67. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were
26 required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked
27 or were not accurately compensated for all overtime hours worked.

28 68. DEFENDANTS’ uniform pattern of unlawful wage and hour practices manifested,

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

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

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

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

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

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

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

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

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

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

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

herein on behalf of these CALIFORNIA CLASS Members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

For Failure to Pay Minimum Wages

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

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

78. 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 First Amended Complaint.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **FOURTH CAUSE OF ACTION**

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

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

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

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

23 93. During the CLASS PERIOD, from time to time, DEFENDANTS failed to provide all the
24 legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
25 required by the applicable Wage Order and Labor Code. The nature of the work performed by
26 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being relieved
27 of all their duties for the legally required off-duty meal periods. As a result of their rigorous work
28 schedules, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time not fully

1 relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to
2 provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior
3 to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records from time to time.
4 Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
5 second off-duty meal period in some workdays in which these employees were required by
6 DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members of the
7 CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
8 accordance with DEFENDANTS' strict corporate policy and practice.

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

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

17 **FIFTH CAUSE OF ACTION**

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

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

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

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

24 97. During the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members
25 were from time to time required to work in excess of four (4) hours without being provided ten (10)
26 minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)
27 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
28 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second

1 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
2 time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
3 hour wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other
4 CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANTS
5 and DEFENDANTS' managers.

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

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

14 **SIXTH CAUSE OF ACTION**

15 **For Failure to Reimburse Employees for Required Expenses**

16 **[Cal. Lab. Code § 2802]**

17 **(By PLAINTIFF Against All Defendants)**

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

21 99. Cal. Lab. Code § 2802 provides, in relevant part, that:
22 An employer shall indemnify his or her employee for all necessary
23 expenditures or losses incurred by the employee in direct consequence of
24 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.

25 100. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code
26 § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA
27 CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit.
28 DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for

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

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

19 **SEVENTH CAUSE OF ACTION**

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

21 **[Cal. Lab. Code §§ 226 and 226.2]**

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

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

26 103. Cal. Labor Code § 226 provides that an employer must furnish employees with an
27 "accurate itemized" statement in writing showing:

- 28 1. Gross wages earned;

2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

3. The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

4. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;

5. Net wages earned;

6. The inclusive dates of the period for which the employee is paid,

7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,

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

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

104. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3) gross wages earned; (4) the correct name and address of the legal entity that is the employer; and (5) the last four (4) digits of employee's social security number or an employee identification number all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of California Labor Code Section 226(a).

105. Further, DEFENDANTS violated California Labor Code Section 226(a)(2) by failing to provide the accurate total hours worked. Specifically, DEFENDANTS included items such as sick pay and meal period penalties into the calculation of total hours worked. However, these items are not considered hours worked for purposes of Cal. Lab. Code § 226(a)(2). In addition to the foregoing,

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

3 106. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §
4 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA
5 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for
6 the overtime worked and the amount of employment taxes which were not properly paid to state and
7 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other
8 members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)
9 for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
10 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and
11 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time
12 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
13 member of the CALIFORNIA CLASS herein.

14 **EIGHTH CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES WHEN DUE**

16 **(Cal Lab. Code §§201, 202, 203)**

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

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

21 108. Cal. Lab. Code § 200 provides that:

22 As used in this article: (a) "Wages" includes all amounts for labor
23 performed by employees of every description, whether the amount
24 is fixed or ascertained by the standard of time, task, piece,
25 Commission basis, or other method of calculation. (b) "Labor"
26 includes labor, work, or service whether rendered or performed
under contract, subcontract, partnership, station plan, or other
agreement if the labor to be paid for is performed personally by the
person demanding payment.

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

1 110. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

11 112. Cal. Lab. Code § 203 provides:

12 If an employer willfully fails to pay, without abatement or reduction,
13 in accordance with Sections 201, 201.5, 202, and 205.5, any wages
14 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.

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

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

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1 **NINTH CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§2698 et seq.)**

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

5 115. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein,
6 the prior paragraphs of this First Amended Complaint.

7 116. PAGA is a mechanism by which the State of California itself can enforce state labor laws
8 through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law
9 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
10 enforcement action designed to protect the public and not to benefit private parties. The purpose of
11 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
12 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
13 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
14 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly,
15 PAGA claims cannot be subject to arbitration.

16 117. PLAINTIFF, and such persons that may be added from time to time who satisfy the
17 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
18 this Representative Action on behalf of the State of California with respect to themselves and all
19 individuals who are or previously were employed by DEFENDANT and classified as non-exempt
20 employees in California during the time period of October 6, 2020 until the present (the "AGGRIEVED
21 EMPLOYEES").

22 118. On October 6, 2021, PLAINTIFF gave written notice by certified mail to the Labor and
23 Workforce Development Agency (the "Agency") and the employer of the specific provisions of
24 this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
25 hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these
26 allegations to the First Amended Complaint has expired. As a result, pursuant to Section 2699.3,
27 Plaintiff may now commence a representative civil action under PAGA pursuant to Section 2699 as the
28 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

119. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANTS (a) failed to properly record and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized wage statements, (c) failed to provide mandatory meal breaks and rest breaks, (d) failed to pay sick time, meal and rest break premiums at the correct rate, and (e) failed to timely pay wages at the correct rate, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 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 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

1. On behalf of the CALIFORNIA CLASS:

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

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

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

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

E) 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;

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

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

///

1 3. On all claims:

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

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

4 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
5 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

6
7 Dated: December 13, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

8
9 By: 
Jean-Claude Lapuyade
10 Attorneys for PLAINTIFF

11 **DEMAND FOR JURY TRIAL**

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

13
14 Dated: December 13, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

15
16 By: 
Jean-Claude Lapuyade
17 Attorneys for PLAINTIFF
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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #42301

October 6, 2021

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

MARSHALL E. HELM CORP.

dba GREENLAWN FUNERAL HOMES

c/o James Lamar

2739 Panama Lane

Bakersfield, CA 93313

Via Certified Mail with Return Receipt No. 7021 0350 0000 8465 1017

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

Dear Sir/Madam:

Our offices represent Plaintiff JERMELL JONES (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant MARSHALL E. HELM CORP. dba GREENLAWN FUNERAL HOMES (“Defendant”). Plaintiff was employed by Defendant in California between February 2015 to October 2020 as a non-exempt employee, 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 his time worked, and for all of his 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, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant 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 extending to the right.

Shani O. Zakay
Attorney for Plaintiff

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Attorneys for Plaintiff JERMELL JONES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN

JERMELL JONES, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

MARSHALL E. HELM CORP., a California
corporation; and DOES 1 through 50, Inclusive;

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

1 VIOLATION OF CAL. LAB. CODE §
2 2802;

3 7. FAILURE TO PROVIDE ACCURATE
4 ITEMIZED STATEMENTS IN
5 VIOLATION OF CAL. LAB. CODE §
6 226;

7 8. FAILURE TO PAY WAGES WHEN
8 DUE IN VIOLATION OF CAL. LABOR
9 CODE §§ 201, 202 AND 203;

10 9. UNPAID SICK PAY IN VIOLATION OF
11 CAL. LAB. CODE § 246.

12 **DEMAND FOR JURY TRIAL**

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

16 **THE PARTIES**

17 1. Defendant MARSHALL E. HELM CORP. (dba Greenlawn Funeral Homes)
18 (“DEFENDANT” and/or “DEFENDANTS”) is a California corporation that at all relevant times owns
19 and operates funeral homes, mortuaries, and cemeteries in the State of California.

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

3. 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

1 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are
2 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
3 proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

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

9 5. 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 employee
12 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
13 for each underpaid employee.

14 6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee from February
15 of 2015 to October 16, 2020, paid on an hourly basis, and entitled to the legally required meal and rest
16 periods and payment of minimum wages, reimbursement for business expenses, and overtime wages
17 due for all time worked.

18 7. PLAINTIFF brings this Class Action on behalf of himself and on behalf of all of
19 DEFENDANTS' current and former non-exempt California employees (the "CALIFORNIA CLASS")
20 at any time during the period beginning four years from the date of the filing of this Complaint and
21 ending on a date determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
22 aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).
23 PLAINTIFF reserves the right to amend the following class definitions before the Court determines
24 whether class certification is appropriate, or thereafter upon leave of Court:

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

1 periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of
2 California Labor Code Sections 226.7(c) and the applicable Industrial Welfare Commission Wage
3 Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in violation
4 of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, (3) failed to reimburse
5 PLAINTIFF and the CALIFORNIA CLASS for required expenses in violation of California Labor
6 Code Section 2802, and (4) failed to provide accurate itemized wage statements in violation of
7 California Labor Code Sections 226 and 226.3.

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

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

15 **JURISDICTION AND VENUE**

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

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

25 **THE CONDUCT**

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

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

A. Meal Period Violations

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

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

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

22 **B. Rest Period Violations**

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

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

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

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

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

19. The second component of PLAINTIFF's and other CALIFORNIA CLASS Member's compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their performance for DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly

1 basis with bonus, and/or incentive compensation when the employees met the various performance
2 goals set by DEFENDANTS.

3 20. However, from-time-to-time, when calculating the regular rate of pay, in those pay
4 periods where PLAINTIFF and the CALIFORNIA CLASS Members worked overtime, or were paid
5 meal and/or rest period premiums, and earned this non-discretionary bonus or incentive
6 DEFENDANTS failed to accurately include the non-discretionary bonus compensation and/or
7 incentive paid as part of the employees' "regular rate of pay" and/or calculated all hours worked rather
8 than just all non-overtime hours worked. Further, when calculating the regular rate of pay in order to
9 pay sick pay to PLAINTIFF and the CALIFORNIA CLASS, DEFENDANTS failed to include the
10 incentive compensation as part of the employees' "regular rate of pay" for purposes of calculating sick
11 pay. Management and supervisors described the incentive/bonus program to potential and new
12 employees as part of the compensation package. As a matter of law, the incentive compensation
13 received by PLAINTIFF and other CALIFORNIA CLASS Members must be included in the "regular
14 rate of pay." The failure to do so has resulted in a systematic underpayment of overtime, meal and
15 rests period premiums, and sick pay to PLAINTIFF and other CALIFORNIA CLASS Members by
16 DEFENDANTS.

17 21. As a matter of law, the incentive and commission compensation received by
18 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly calculated
19 into the "regular rate of pay" for purposes of overtime compensation, meal and rest period premiums,
20 and sick pay. DEFENDANTS' failure to do so has resulted in DEFENDANTS' systematic
21 underpayment of overtime compensation, meal and rest period premiums, and sick pay to PLAINTIFF
22 and other CALIFORNIA CLASS members. Specifically, California Labor Code Section 246 mandates
23 that paid sick time for non-employees shall be calculated in the same manner as the regular rate of pay
24 for the workweek in which the non-exempt employee uses paid sick time, whether or not the employee
25 actually works overtime in that workweek. DEFENDANT'S conduct, as articulated herein, by failing
26 to include the incentive compensation as part of the "regular rate of pay" for purposes of sick pay
27 compensation was in violation of Cal. Lab. Code § 246.
28

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

D. Unreimbursed Business Expenses

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

24. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use their own personal cell phones, use their home internet, and provide and maintain their own uniforms as a result of and in furtherance of their job duties as employees for DEFENDANTS. But for the use of their own personal cell phones, use of their home internet, and uniforms, PLAINTIFF and the members of the CALIFORNIA CLASS could not complete their essential job duties. Notwithstanding, DEFENDANTS did not reimburse or indemnify PLAINTIFF or other CALIFORNIA CLASS Members for the cost associated with the use

1 of their own personal cell phones, home internet, or uniforms for DEFENDANTS' benefit.
2 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT
3 to use their personal cell phones and home internet for work related issues including communicating
4 with DEFENDANTS' supervisors and customers for work related duties, without being reimbursed for
5 said expenses. Further, DEFENDANTS required that PLAINTIFF and other CALIFORNIA CLASS
6 Members provide and maintain their own uniforms. DEFENDANTS provided PLAINTIFF and other
7 CALIFORNIA CLASS Members with an allowance to purchase uniforms. However, the allowance
8 was inadequate in light of the actual monies spent on the purchase and maintenance of uniforms and
9 DEFENDANTS failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the
10 additional costs associated with uniform purchases and maintenance. As a result, in the course of their
11 employment with DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS
12 incurred unreimbursed business expenses which included, but were not limited to, costs related to the
13 use of their personal cell phones, use of their home internet, and uniforms, all on behalf of and for the
14 benefit of DEFENDANTS.

15 **E. Wage Statement Violations**

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

24 26. From time to time during the CLASS PERIOD, when PLAINTIFF and other
25 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal
26 and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide
27 PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements
28 which failed to show, among other things, the total hours worked and all applicable hourly rates in

1 effect during the pay period and the corresponding amount of time worked at each hourly rate, correct
2 rates of pay for penalty payments or missed meal and rest periods.

3 27. In addition to the violations described above, DEFENDANTS, from time to time, failed
4 to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply
5 with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other members of
6 the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
7 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional
8 payroll error due to clerical or inadvertent mistake.

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

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

16 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF
17 and other members of the CALIFORNIA CLASS to perform pre-shift work, including but not limited
18 to, arriving early to open the facility and assist customers. DEFENDANTS also required PLAINTIFF
19 and other CALIFORNIA CLASS Members to perform post-shift work, including but not limited to,
20 assisting colleagues, preparing the facility for new corpses, and preparing documentation. Further,
21 PLAINTIFF and other CALIFORNIA CLASS Members were required to remain on-call after working
22 hours and were required to respond to and assist DEFENDANTS' supervisors at all times and outside
23 of their scheduled shifts. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS
24 to have to work while off-the-clock.

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

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

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

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

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

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

17 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited
18 wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent
19 opening the facility, preparing documentation, and remaining on-call while off-the-
20 clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members of the
21 CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by
22 DEFENDANTS' business records.

23 **G. CLASS ACTION ALLEGATIONS**

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

28 34. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been

1 deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid
2 minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal
3 and rest period policies, failure to separately compensate rest periods, failed to reimburse for business
4 expenses, failed to compensate for off-the-clock work, failure to provide accurate itemized wage
5 statements, failure to maintain required records, and interest, statutory and civil penalties, attorney's
6 fees, costs, and expenses.

7 35. The members of the class are so numerous that joinder of all class members is impractical.

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

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

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

20 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
21 CALIFORNIA CLASS Members accurate premium payments for missed
22 meal and rest periods;

23 d. Whether DEFENDANTS failed to pay PLAINTIFF and the
24 CALIFORNIA CLASS Members accurate overtime wages;

25 e. Whether DEFENDANTS failed to pay PLAINTIFF and the
26 CALIFORNIA CLASS Member accurate sick pay;

27 f. Whether DEFENDANTS failed to pay PLAINTIFF and the
28 CALIFORNIA CLASS Members at least minimum wage for all hours

1 worked;

2 g. Whether Defendants failed to compensate PLAINTIFF and the
3 CALIFORNIA CLASS Members for required business expenses;

4 h. Whether DEFENDANTS issued legally compliant wage statements;

5 i. Whether DEFENDANTS committed an act of unfair competition by
6 systematically failing to record and pay PLAINTIFF and the other members
7 of the CALIFORNIA CLASS for all time worked;

8 j. Whether DEFENDANTS committed an act of unfair competition by
9 systematically failing to record all meal and rest breaks missed by
10 PLAINTIFF and other CALIFORNIA CLASS Members, even though
11 DEFENDANTS enjoyed the benefit of this work, required employees to
12 perform this work and permits or suffers to permit this work;

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

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

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

21 39. PLAINTIFF will fairly and adequately represent and protect the interests of the
22 CALIFORNIA CLASS Members.

23 40. PLAINTIFF retained able class counsel with extensive experience in class action
24 litigation.

25 41. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests
26 of the other CALIFORNIA CLASS Members.

27 42. There is a strong community of interest among PLAINTIFF and the members of the
28 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient

1 to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained.

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

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

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

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

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

22 **FIRST CAUSE OF ACTION**

23 **For Unlawful Business Practices**

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

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

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

28 47. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §

1 17021.

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

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

10 Cal. Bus. & Prof. Code § 17203.

11 49. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
12 CLASS Members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
13 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
14 “UCL”), by engaging and continuing to engage in business practices which violates California law,
15 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
16 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512,
17 1194, 1197, 1197.1, 1198, & 2802 for which this Court should issue declaratory and other equitable
18 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
19 held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

25 51. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and fraudulent
26 in that DEFENDANTS’ uniform policy and practice failed to, *inter alia*, provide the legally mandated
27 meal and rest periods, the required accurate amount of compensation for missed meal and rest periods,
28 overtime and minimum wages owed, provide accurate itemized wage statements, due to a systematic

business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

53. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair, and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*, provide the legally mandated meal and rest periods, the required accurate amount of compensation for missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal. Labor Code.

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

55. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off duty paid rest period was not timely provided as required by law.

56. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately calculated overtime and missed meal and rest periods premiums.

57. By and through the unlawful and unfair business practices described herein, DEFENDANTS has obtained valuable property, money, and services from PLAINTIFF and the other members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly

1 compete against competitors who comply with the law.

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

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

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

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

23 **SECOND CAUSE OF ACTION**

24 **For Failure to Pay Overtime Compensation**

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

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

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

1 63. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period
2 beginning four years prior to the filing of the Complaint and the present (“CLASS PERIOD”) bring a
3 claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and the
4 Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these employees for
5 all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve
6 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

16 67. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were
17 required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked
18 or were not accurately compensated for all overtime hours worked.

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

26 69. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
27 calculated the amount of overtime worked and the applicable overtime rates and consequently underpaid
28 the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS.

1 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
2 in violation of the California Labor Code, the Industrial Welfare Commission requirements and other
3 applicable laws and regulations.

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

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

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

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

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

28 75. DEFENDANTS knew or should have known that PLAINTIFF and the other members of

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

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

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

23 **THIRD CAUSE OF ACTION**

24 **For Failure to Pay Minimum Wages**

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

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

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

1 79. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
2 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
3 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
4 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members during the CLASS PERIOD.

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

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

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

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

19 84. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
20 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
21 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
22 of the CALIFORNIA CLASS in regard to minimum wage pay.

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

28 86. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,

1 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum
2 wage compensation for their time worked for DEFENDANTS.

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

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

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

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

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

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

6 **FOURTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 226.7 & 512]**

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

10 92. 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 Complaint.

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

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

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

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

6 **FIFTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 226.7 & 512]**

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

10 96. 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 Complaint.

12 97. During the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members
13 were from time to time required to work in excess of four (4) hours without being provided ten (10)
14 minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)
15 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
16 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
17 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
18 time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
19 hour wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other
20 CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANTS
21 and DEFENDANTS' managers.

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

27 99. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA
28 CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned

1 and due, interest, penalties, expenses and costs of suit.

2 **SIXTH CAUSE OF ACTION**

3 **For Failure to Reimburse Employees for Required Expenses**

4 **[Cal. Lab. Code § 2802]**

5 **(By PLAINTIFF Against All Defendants)**

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

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

9 An employer shall indemnify his or her employee for all necessary
10 expenditures or losses incurred by the employee in direct consequence of
11 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.

12 100. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code
13 § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA
14 CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit.
15 DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for
16 expenses which included, but were not limited to, costs related to using their personal cell phones, using
17 their home internet, and providing and maintaining their own uniforms, all on behalf of and for the
18 benefit of DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS
19 were required by DEFENDANTS to use their personal cell phones, use their home internet, and provide
20 and maintain their own uniforms to execute their essential job duties on behalf of DEFENDANTS.
21 DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and the
22 members of the CALIFORNIA CLASS for expenses resulting from using their personal cell phones,
23 using their home internet, or providing and maintaining their own uniforms for DEFENDANTS within
24 the course and scope of their employment for DEFENDANTS. These expenses were necessary to
25 complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert
26 any waiver of their expectation. Although these expenses were necessary expenses incurred by
27 PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and
28 reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an

1 employer is required to do under the laws and regulations of California.

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

6 **SEVENTH CAUSE OF ACTION**

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

8 **[Cal. Lab. Code §§ 226 and 226.2]**

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

10 102. 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 Complaint.

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

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

- 1 8. The name and address of the legal entity that is the employer, and
2 9. All applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee.

4 104. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the
5 other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
6 to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3)
7 gross wages earned; (4) the correct name and address of the legal entity that is the employer; and (5)
8 the last four (4) digits of employee's social security number or an employee identification number all
9 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
10 at each hourly rate by the employee in violation of California Labor Code Section 226(a).

11 105. Further, DEFENDANTS violated California Labor Code Section 226(a)(2) by failing to
12 provide the accurate total hours worked. Specifically, DEFENDANTS included items such as sick pay
13 and meal period penalties into the calculation of total hours worked. However, these items are not
14 considered hours worked for purposes of Cal. Lab. Code § 226(a)(2). In addition to the foregoing,
15 DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the
16 CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

17 106. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §
18 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA
19 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for
20 the overtime worked and the amount of employment taxes which were not properly paid to state and
21 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other
22 members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)
23 for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
24 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and
25 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time
26 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
27 member of the CALIFORNIA CLASS herein.

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

3 **(Cal Lab. Code §§201, 202, 203)**

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

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

7 108. Cal. Lab. Code § 200 provides that:

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

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

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

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

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

24 112. Cal. Lab. Code § 203 provides:

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

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

114. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands up to thirty 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 demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

NINTH CAUSE OF ACTION

UNPAID SICK PAY

(Cal. Lab. Code § 246, *et seq.*)

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

115. 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.

116. Cal. Labor Code Sections 246(l)(1) mandates that “[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.”

117. From time-to-time, during the PLAINTIFF and other members of the CALIFORNIA CLASS were compensated at an hourly rate plus bonuses. As a matter of law, the bonus compensation received by PLAINTIFF and other members of the CALIFORNIA CLASS must be included in the “regular rate of pay.”

118. From time-to-time during the CLASS PERIOD, in those pay periods where PLAINTIFF and other members of the CALIFORNIA CLASS earned hourly compensation and non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to properly calculate the regular rate of pay for purposes of compensating paid sick time by omitting non-discretionary incentive pay from the regular rate of pay.

119. DEFENDANT's uniform policy and practice of omitting non-discretionary bonuses from the regular rate of pay for purposes of paying paid sick pay, resulted in the underpayment of sick pay wages to PLAINTIFF and other members of the CALIFORNIA CLASS. PLAINTIFF and other members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, including sick pay wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent sick pay is determined to be owed to other members of the CALIFORNIA CLASS who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of other members of the CALIFORNIA CLASS. DEFENDANT'S conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other members of the CALIFORNIA CLASS are entitled to seek and recover statutory costs.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

1. On behalf of the CALIFORNIA CLASS:

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

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

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

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

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

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

2. On all claims:

- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

Dated: October 6, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

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Dated: October 6, 2021

By: JCL
Jean-Claude Lapuyade
Attorneys for PLAINTIFF