

# SUMMONS (CITACION JUDICIAL)

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

STAR MANUFACTURING, LLC, a Delaware Limited Liability Company; and DOES 1 through 50, Inclusive;

## YOU ARE BEING SUED BY PLAINTIFF:

### (LO ESTÁ DEMANDANDO EL DEMANDANTE):

WILLIAM D. CHELOS, an individual, on behalf of himself, and on behalf of all persons similarly situated,

## ELECTRONICALLY FILED

Superior Court of California,  
County of San Diego

11/16/2021 at 10:28:26 AM

Clerk of the Superior Court  
By Elizabeth Reyes, Deputy Clerk

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court - Hall of Justice  
330 W. Broadway  
San Diego, CA 92101

CASE NUMBER: 37-2021-00048518-CU-0E-CTL  
(Número del Caso):

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

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jean-Claude Lapuyade, Esq. SBN:2748767 Tel: (619) 599-8292 Fax: (619) 599-8291

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

DATE: 11/17/2021  
(Fecha)

Clerk, by  E. Reyes, Deputy  
(Secretario) (Adjunto)

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

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

## NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
 

|                                                                  |                                                         |
|------------------------------------------------------------------|---------------------------------------------------------|
| under: <input type="checkbox"/> CCP 416.10 (corporation)         | <input type="checkbox"/> CCP 416.60 (minor)             |
| <input type="checkbox"/> CCP 416.20 (defunct corporation)        | <input type="checkbox"/> CCP 416.70 (conservatee)       |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify):                        |                                                         |
4. ☐ by personal delivery on (date):

[SEAL]



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Attorneys for Plaintiff WILLIAM D. CHELOS

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**11/16/2021** at 10:28:26 AM  
Clerk of the Superior Court  
By Elizabeth Reyes, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

WILLIAM D. CHELOS, an individual, on  
behalf of himself, and on behalf of all persons  
similarly situated,

Plaintiffs,

vs.

STAR MANUFACTURING, LLC, a Delaware  
Limited Liability Company; and DOES 1  
through 50, Inclusive;

Defendants.

Case No. 37-2021-00048518-CU-OE-CTL

**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 and 226.2;
8. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION FO CAL. LABOR CODE §§ 201, 202 AND 203; AND
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.]

#### **DEMAND FOR JURY TRIAL**

Plaintiff WILLIAM D. CHELOS (“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 STAR MANUFACTURING, LLC (“DEFENDANT”) is a Delaware limited liability company, that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego.

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 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 Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANT” and/or “DEFENDANTS”), are responsible in some manner for one or more of the events and happenings that 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

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

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

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

6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on an hourly basis and entitled to minimum wages, overtime pay, and legally compliant meal and rest periods from February of 2020 to December of 2020.

7. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all individuals who are or previously were employed by DEFENDANTS and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four years from the date of the filing of this Complaint and ending on a date determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS members is under five million dollars (\$5,000,000.00). PLAINTIFF reserves the right to amend the following class definitions before the 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

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), 512(a) and the applicable Industrial Welfare Commission  
3 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in  
4 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to  
5 provide accurate itemized wage statements in violation of California Labor Code Sections 226 and  
6 226.2.

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

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

#### 14 JURISDICTION AND VENUE

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

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

#### 24 THE CONDUCT

25 13. In violation of the applicable sections of the California Labor Code and the requirements  
26 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company  
27 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally  
28 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 to pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime 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 DEFENDANTS' under staffing, 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 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked is evidenced by DEFENDANTS' business records.

15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work schedules, and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA

CLASS members were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS members were required from time to time to perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-duty meal period for some workdays in which these employees were required by DEFENDANTS to work ten (10) hours of work from time to time. The nature of the work performed by the PLAINTIFF and the members of the CALIFORNIA CLASS does not qualify for limited and narrowly construed “on-duty” meal period exception. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS’ strict corporate policy and practice.

**B. Rest Period Violations**

16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS members were also required from time to time to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work schedules, and DEFENDANTS’ inadequate staffing. Further, for the same reasons these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second, and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. As a result of their rigorous work schedules and DEFENDANTS’ inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS members were from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS’ managers.

**C. Regular Rate Violation – Overtime, 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 and meal and rest premiums. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages due to them for working overtime without

1 compensation at the correct overtime and meal and rest period premiums rates. DEFENDANTS'  
2 uniform policy and practice to not pay the CALIFORNIA CLASS members the correct rate for all  
3 overtime and meal and rest period premiums in accordance with applicable law is evidenced by  
4 DEFENDANTS' business records.

5 18. State law provides that employees must be paid overtime at one-and-one-half times their  
6 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at  
7 an hourly rate plus bonuses that was tied to how much money the company makes per year in sales.

8 19. DEFENDANTS' non-discretionary bonus program provided the CALIFORNIA CLASS,  
9 including PLAINTIFF, with bonus compensation when the company met the various performance  
10 goals set by DEFENDANT. However, when calculating the regular rate of pay, in those pay periods  
11 where PLAINTIFF and the CALIFORNIA CLASS worked overtime and earned non-discretionary  
12 bonus compensation, DEFENDANT failed to accurately include the non-discretionary bonus  
13 compensation as part of the employees' "regular rate of pay."

14 20. In other instances, when calculating the regular rate of pay, in those pay periods where  
15 PLAINTIFF and the CALIFORNIA CLASS worked overtime and earned this non-discretionary bonus,  
16 DEFENDANT failed to (1) accurately include the non-discretionary bonus compensation into the  
17 regular rate of pay and/or (2) calculated all hours worked rather than just all non-overtime hours worked  
18 into the regular rate of pay in violation of *Alvarado v. Dart* (2018) 4 Cal.5th 542.

19 21. As a matter of law, the incentive compensation received by PLAINTIFFS and other  
20 CALIFORNIA CLASS members must be included and correctly calculated into the "regular rate of  
21 pay" for purposes of overtime and meal and rest period premium compensation. DEFENDANTS'  
22 failure to do so has resulted in DEFENDANTS' systematic underpayment of overtime and meal and  
23 rest period premium compensation to PLAINTIFF and other CALIFORNIA CLASS members.

24 22. In violation of the applicable sections of the California Labor Code and the requirements  
25 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company  
26 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the  
27 other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime worked and  
28 meal and rest period premiums. This uniform policy and practice of DEFENDANTS is intended to

purposefully avoid the payment of the correct overtime 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 members 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 the members of the CALIFORNIA CLASS for 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 the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their own personal cellular phones as a result of and in furtherance of their job duties as employees for DEFENDANTS. But for the use of their personal cell phones, PLAINTIFF and the members of the CALIFORNIA CLASS could not complete their essential job duties. Notwithstanding, DEFENDANTS did not reimburse or indemnify PLAINTIFF or the members of the CALIFORNIA CLASS for the cost associated with the use of their personal cellular phones for DEFENDANTS' benefit. As a result, in the course of their employment with DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not limited to, costs related to the use of their personal cellular phones, all on behalf of and for the benefit of DEFENDANTS.

**E. Wage Statement Violations**

25. California Labor Code Section 226 requires an employer to furnish its employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the

number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

26. From time to time during the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS members missed meal and rest breaks, were paid inaccurate missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods. Further, from time to time during the CLASS PERIOD, DEFENDANTS issued wage statements to PLAINTIFF and other CALIFORNIA CLASS members that failed to comply with all the requirements of Cal. Lab. Code § 226.

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

#### **F. CLASS ACTION ALLEGATIONS**

28. PLAINTIFF brings the First through Eighth Causes of Action as a class action pursuant to California Code of Civil Procedure § 382 on behalf the CALIFORNIA CLASS, defined *supra*, that worked for DEFENDANT in California at any time beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court.

29. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid

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

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

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

- a. Whether DEFENDANTS maintained legally compliant meal period policies and practices;
- b. Whether DEFENDANTS maintained legally compliant rest period policies and practices;
- c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members accurate premium payments for missed meal and rest periods;
- d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members accurate overtime wages;
- e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members at least minimum wage for all hours worked;
- f. Whether DEFENDANTS issued legally compliant wage statements;
- g. 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;

h. 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;

i. 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; and,

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

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

34. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS members.

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

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

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

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

39. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover, since the damages

suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

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

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

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

### **FIRST CAUSE OF ACTION**

#### **For Unlawful Business Practices**

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

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

41. 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.

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

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

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a

receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

Cal. Bus. & Prof. Code § 17203.

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

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

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

47. 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

1 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

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

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

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

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

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

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

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

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

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

17                                   **SECOND CAUSE OF ACTION**

18                                   **For Failure to Pay Overtime Compensation**

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

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

21          57. 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 Complaint.

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

59. 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.

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

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

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

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

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

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

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

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

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

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

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

71. In performing the acts and practices herein alleged in violation of California labor laws,

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

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

### **THIRD CAUSE OF ACTION**

#### **For Failure to Pay Minimum Wages**

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

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

73. 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.

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

75. 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.

76. 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.

77. 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.

78. 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.

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

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

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

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

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

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

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

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

**FOURTH CAUSE OF ACTION**

**For Failure to Provide Required Meal Periods**

**[Cal. Lab. Code §§ 226.7 & 512]**

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

87. 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.

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

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

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

**FIFTH CAUSE OF ACTION**

**For Failure to Provide Required Rest Periods**

**[Cal. Lab. Code §§ 226.7 & 512]**

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

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

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

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

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

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1 **SIXTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 2802]**

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

5 95. 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 96. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

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

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

## **SEVENTH CAUSE OF ACTION**

### For Failure to Provide Accurate Itemized Statements

**[Cal. Lab. Code §§ 226 and 226.2]**

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

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

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

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and 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.

101. 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 and (7) 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.

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

# **EIGHTH CAUSE OF ACTION**

## **FAILURE TO PAY WAGES WHEN DUE**

**(Cal Lab. Code §§ 201, 202, 203)**

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

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

104. Cal. Lab. Code § 200 provides that:

As used in this article: (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount

1 is fixed or ascertained by the standard of time, task, piece,  
2 Commission basis, or other method of calculation. (b) "Labor"  
3 includes labor, work, or service whether rendered or performed  
4 under contract, subcontract, partnership, station plan, or other  
5 agreement if the labor to be paid for is performed personally by the  
6 person demanding payment.

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

9 106. Cal. Lab. Code § 202 provides, in relevant part, that:

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

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

23 108. Cal. Lab. Code § 203 provides:

24 If an employer willfully fails to pay, without abatement or reduction,  
25 in accordance with Sections 201, 201.5, 202, and 205.5, any wages  
26 of an employee who is discharged or who quits, the wages of the  
27 employee shall continue as a penalty from the due date thereof at the  
28

same rate until paid or until an action therefor is commenced; but  
the wages shall not continue for more than 30 days.

109. 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.

110. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand 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**

**VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

**(Cal. Lab. Code §§2698 et seq.)**

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

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

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

113. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all

1 individuals who are or previously were employed by DEFENDANT and classified as non-exempt  
2 employees in California during the time period of September 10, 2020 until the present (the  
3 "AGGRIEVED EMPLOYEES").

4 114. On September 10, 2021, PLAINTIFF gave written notice by certified mail to the Labor  
5 and Workforce Development Agency (the "Agency") and the employer of the specific provisions  
6 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached  
7 hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these  
8 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may now  
9 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State  
10 of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

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

24 **PRAYER FOR RELIEF**

25 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANT, jointly and  
26 severally, as follows:

- 27 1. On behalf of the CALIFORNIA CLASS:  
28

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

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

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

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

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

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

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

22 3. Meal and rest period compensation pursuant to California Labor Code Sections  
23 226.7, 512 and the applicable IWC Wage Order; and

24 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and  
25 1197.

26 2. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:  
27 Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of  
28 2004;

3. On all claims:

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

Dated: November 16, 2021

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

By:   
Jean-Claude Lapuyade  
Attorneys for PLAINTIFF

**DEMAND FOR JURY TRIAL**

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

Dated: November 16, 2021

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

By:   
Jean-Claude Lapuyade  
Attorneys for PLAINTIFF

# **EXHIBIT 1**



Client # 41601

September 10, 2021

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

**STAR MANUFACTURING, LLC**

c/o CSC- Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

***Via Certified Mail with Return Receipt No. 7021 0350 0000 8465 3073***

**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 WILLIAM D. CHELOS (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against STAR MANUFACTURING, LLC, a Delaware Limited Liability Company (“Defendant”). Plaintiff was employed by Defendant in California between February of 2020 to December of 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 their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, 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 employees and exempt employees who worked for Defendant 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.

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 Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,



Shani O. Zakay  
Attorney for Plaintiff

**JCL LAW FIRM, APC**

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Attorneys for Plaintiff WILLIAM D. CHELOS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

WILLIAM D. CHELOS, an individual, on  
behalf of himself, and on behalf of all persons  
similarly situated,

Plaintiffs,

vs.

STAR MANUFACTURING, LLC, a Delaware  
Limited Liability Company; 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

- VIOLATION OF CAL. LAB. CODE § 2802;
- 7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§ 226 and 226.2; and
- 8. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION FO CAL. LABOR CODE §§ 201, 202 AND 203.

**DEMAND FOR JURY TRIAL**

Plaintiff WILLIAM D. CHELOS (“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 STAR MANUFACTURING, LLC (“DEFENDANT”) is a Delaware limited liability company, that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego.

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 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 Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANT” and/or “DEFENDANTS”), are responsible in some manner for one or more of the events and happenings that 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 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are

jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

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

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

6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on an hourly basis and entitled to minimum wages, overtime pay, and legally compliant meal and rest periods from February of 2020 to December of 2020.

7. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all individuals who are or previously were employed by DEFENDANTS and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four years from the date of the filing of this Complaint and ending on a date determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS members is under five million dollars (\$5,000,000.00). PLAINTIFF reserves the right to amend the following class definitions before the 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

1 California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission  
2 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in  
3 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to  
4 provide accurate itemized wage statements in violation of California Labor Code Sections 226 and  
5 226.2.

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

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

### 13 JURISDICTION AND VENUE

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

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

### 23 THE CONDUCT

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

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

10 **A. Meal Period Violations**

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

26 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work  
27 schedules, and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA  
28 CLASS members were from time to time unable to take thirty (30) minute off duty meal breaks and

1 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS  
2 members were required from time to time to perform work as ordered by DEFENDANTS for more  
3 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from  
4 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-  
5 duty meal period for some workdays in which these employees were required by DEFENDANTS to  
6 work ten (10) hours of work from time to time. The nature of the work performed by the PLAINTIFF  
7 and the members of the CALIFORNIA CLASS does not qualify for limited and narrowly construed  
8 “on-duty” meal period exception. PLAINTIFF and other members of the CALIFORNIA CLASS  
9 therefore forfeited meal breaks without additional compensation and in accordance with  
10 DEFENDANTS’ strict corporate policy and practice.

11 **B. Rest Period Violations**

12 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA  
13 CLASS members were also required from time to time to work in excess of four (4) hours without  
14 being provided ten (10) minute rest periods as a result of their rigorous work schedules, and  
15 DEFENDANTS’ inadequate staffing. Further, for the same reasons these employees were denied their  
16 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours  
17 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of  
18 between six (6) and eight (8) hours from time to time, and a first, second, and third rest period of at  
19 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. As a result  
20 of their rigorous work schedules and DEFENDANTS’ inadequate staffing, PLAINTIFF and other  
21 CALIFORNIA CLASS members were from time to time denied their proper rest periods by  
22 DEFENDANTS and DEFENDANTS’ managers.

23 **C. Regular Rate Violation – Overtime, Meal and Rest Period Premiums**

24 17. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to  
25 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for  
26 their overtime hours worked and meal and rest premiums. As a result, PLAINTIFF and the other  
27 CALIFORNIA CLASS members forfeited wages due to them for working overtime without  
28 compensation at the correct overtime and meal and rest period premiums rates. DEFENDANTS’

1 uniform policy and practice to not pay the CALIFORNIA CLASS members the correct rate for all  
2 overtime and meal and rest period premiums in accordance with applicable law is evidenced by  
3 DEFENDANTS' business records.

4 18. State law provides that employees must be paid overtime at one-and-one-half times their  
5 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at  
6 an hourly rate plus bonuses that was tied to how much money the company makes per year in sales.

7 19. DEFENDANTS' non-discretionary bonus program provided the CALIFORNIA CLASS,  
8 including PLAINTIFF, with bonus compensation when the company met the various performance  
9 goals set by DEFENDANT. However, when calculating the regular rate of pay, in those pay periods  
10 where PLAINTIFF and the CALIFORNIA CLASS worked overtime and earned non-discretionary  
11 bonus compensation, DEFENDANT failed to accurately include the non-discretionary bonus  
12 compensation as part of the employees' "regular rate of pay."

13 20. In other instances, when calculating the regular rate of pay, in those pay periods where  
14 PLAINTIFF and the CALIFORNIA CLASS worked overtime and earned this non-discretionary bonus,  
15 DEFENDANT failed to (1) accurately include the non-discretionary bonus compensation into the  
16 regular rate of pay and/or (2) calculated all hours worked rather than just all non-overtime hours worked  
17 into the regular rate of pay in violation of *Alvarado v. Dart* (2018) 4 Cal.5th 542.

18 21. As a matter of law, the incentive compensation received by PLAINTIFFS and other  
19 CALIFORNIA CLASS members must be included and correctly calculated into the "regular rate of  
20 pay" for purposes of overtime and meal and rest period premium compensation. DEFENDANTS'  
21 failure to do so has resulted in DEFENDANTS' systematic underpayment of overtime and meal and  
22 rest period premium compensation to PLAINTIFF and other CALIFORNIA CLASS members.

23 22. In violation of the applicable sections of the California Labor Code and the requirements  
24 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company  
25 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the  
26 other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime worked and  
27 meal and rest period premiums. This uniform policy and practice of DEFENDANTS is intended to  
28 purposefully avoid the payment of the correct overtime compensation as required by California law

1 which allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors who  
2 complied with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
3 CLASS members against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

4 **D. Unreimbursed Business Expenses**

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

15 24. From time-to-time during the CLASS PERIOD, PLAINTIFF and the members of the  
16 CALIFORNIA CLASS were required by DEFENDANTS to use their own personal cellular phones as  
17 a result of and in furtherance of their job duties as employees for DEFENDANTS. But for the use of  
18 their personal cell phones, PLAINTIFF and the members of the CALIFORNIA CLASS could not  
19 complete their essential job duties. Notwithstanding, DEFENDANTS did not reimburse or indemnify  
20 PLAINTIFF or the members of the CALIFORNIA CLASS for the cost associated with the use of their  
21 personal cellular phones for DEFENDANTS' benefit. As a result, in the course of their employment  
22 with DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS incurred  
23 unreimbursed business expenses which included, but were not limited to, costs related to the use of  
24 their personal cellular phones, all on behalf of and for the benefit of DEFENDANTS.

25 **E. Wage Statement Violations**

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

1 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the  
2 employee and only the last four digits of the employee's social security number or an employee  
3 identification number other than a social security number, (8) the name and address of the legal entity  
4 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the  
5 corresponding number of hours worked at each hourly rate by the employee.

6 26. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
7 CALIFORNIA CLASS members missed meal and rest breaks, were paid inaccurate missed meal and  
8 rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide  
9 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage  
10 statements which failed to show, among other things, all applicable hourly rates in effect during the  
11 pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for  
12 penalty payments or missed meal and rest periods. Further, from time to time during the CLASS  
13 PERIOD, DEFENDANTS issued wage statements to PLAINTIFF and other CALIFORNIA CLASS  
14 members that failed to comply with all the requirements of Cal. Lab. Code § 226.

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

21 **F. CLASS ACTION ALLEGATIONS**

22 28. PLAINTIFF brings the First through Eighth Causes of Action as a class action pursuant  
23 to California Code of Civil Procedure § 382 on behalf the CALIFORNIA CLASS, defined *supra*, that  
24 worked for DEFENDANT in California at any time beginning four (4) years prior to the filing of this  
25 Complaint and ending on the date as determined by the Court.

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

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

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

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

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

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

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

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

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

f. Whether DEFENDANTS issued legally compliant wage statements;

g. 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;

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

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

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

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

14          34.     PLAINTIFF will fairly and adequately represent and protect the interests of the  
15     CALIFORNIA CLASS members.

16          35.     PLAINTIFF retained able class counsel with extensive experience in class action  
17     litigation.

18          36.     Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests  
19     of the other CALIFORNIA CLASS members.

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

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

26          39.     A class action is superior to other available methods for the fair and efficient adjudication  
27     of this controversy because joinder of all class members is impractical. Moreover, since the damages  
28     suffered by individual members of the class may be relatively small, the expense and burden of

individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

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

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

### **FIRST CAUSE OF ACTION**

#### **For Unlawful Business Practices**

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

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

41. 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.

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

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

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a

receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

Cal. Bus. & Prof. Code § 17203.

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

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

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

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

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

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

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

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

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

26           53. All the acts described herein as violations of, among other things, the Industrial Welfare  
27 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were  
28 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were

deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

## **SECOND CAUSE OF ACTION**

### **For Failure to Pay Overtime Compensation**

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

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

57. 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.

58. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period beginning four years prior to the filing of the Complaint and the present (“CLASS PERIOD”) bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these employees for

all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

59. 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.

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

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

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

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

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

65. 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 full compensation for  
2 all overtime worked.

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

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

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

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

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

members of the CALIFORNIA CLASS for overtime worked.

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

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

**THIRD CAUSE OF ACTION**

**For Failure to Pay Minimum Wages**

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

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

73. 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.

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

1 CLASS PERIOD.

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

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

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

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

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

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

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

28 82. During the CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA

1 CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned  
2 wages.

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

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

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

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

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#### **FOURTH CAUSE OF ACTION**

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

**[Cal. Lab. Code §§ 226.7 & 512]**

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

87. 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.

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

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



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4 **SIXTH CAUSE OF ACTION**

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

6 **[Cal. Lab. Code § 2802]**

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

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

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

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

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

members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and regulations of California.

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

### **SEVENTH CAUSE OF ACTION**

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

**[Cal. Lab. Code §§ 226 and 226.2]**

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

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

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

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and 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.

101. 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 and (7) 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.

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

### **EIGHTH CAUSE OF ACTION**

#### **FAILURE TO PAY WAGES WHEN DUE**

**(Cal Lab. Code §§ 201, 202, 203)**

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

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

104. Cal. Lab. Code § 200 provides that:

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

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

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

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

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

108. Cal. Lab. Code § 203 provides:

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

of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

109. 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.

110. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand 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.

**PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANT, jointly and severally, 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;

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; and,

E) That the Court certify the Second, Third, Fourth, Fifth, Sixth, and 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 overtime compensation 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 Sections 226.7, 512 and the applicable IWC Wage Order; and

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

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: \_\_\_\_\_

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

By:   
Jean-Claude Lapuyade  
Attorneys for PLAINTIFF

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**DEMAND FOR JURY TRIAL**

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

Dated: \_\_\_\_\_

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

By:  \_\_\_\_\_  
Jean-Claude Lapuyade  
Attorneys for PLAINTIFF



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Star Manufacturing, LLC  
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2710 Gateway Oaks Drive  
Sacramento, CA 95833  
Suite 150N



9590 9402 6744 1060 3013 01

## 2. Article Number (Transfer from service label)

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SEP 23 2021

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