

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

DEC 11 2020 AM 9:13

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

WEB TO DOOR CORP., a Nevada corporation; SOUTH EAST PERSONNEL LEASING, INC., a Florida corporation; and DOES 1 through 50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

MARK WILLIAMS, JORGE MEDINA and DERRIELL THOMAS, individually and on behalf of all persons similarly situated,

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

San Francisco Superior Court, Civic Center Courthouse
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
(Número del Caso) 20-588382

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

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

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291

JCL Law Firm, APC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE:

(Fecha) 12/21/2020

Clerk, by

(Secretario)

Deputy

(Adjunto)

CLERK OF THE COURT

BOWMAN LIU

(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

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

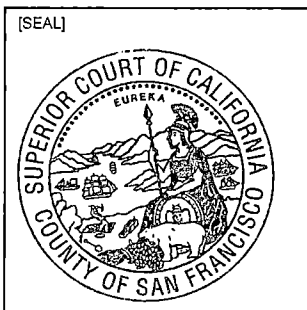
☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

- ☐ by personal delivery on (date):

VIA FAX



1 **JCL LAW FIRM, APC**

2 JEAN-CLAUDE LAPUYADE, ESQ. (SBN 248676)

3 3990 OLD TOWN AVENUE, SUITE C204

4 SAN DIEGO, CA 92110

5 TEL: (619) 599-8292

6 FAX: (619) 599-8291

7 *ADDITIONAL COUNSEL ON NEXT PAGE
8 ATTORNEYS FOR PLAINTIFFS

FILED
San Francisco County Superior Court

DEC 11 2020

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

BOWMAN LIU

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

9 MARK WILLIAMS, JORGE MEDINA and
10 DERRIELL THOMAS, individually and on
behalf of all persons similarly situated,

11 Plaintiffs,

12 vs.

13 WEB TO DOOR CORP., a Nevada
14 corporation; SOUTH EAST PERSONNEL
LEASING, INC., a Florida corporation; and
15 DOES 1 through 50, Inclusive,

16 Defendants.

Case No. CGC -20-588382

CLASS ACTION COMPLAINT

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 EMPLOYEES 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
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

JURY TRIAL DEMANDED

VIA FAX

ZAKAY LAW GROUP, APLC
SHANI O. ZAKAY (STATE BAR #277924)
5850 OBERLIN DRIVE, SUITE 230A
SAN DIEGO, CA 92121
TEL: (619) 255-9047
FAX: (858) 404-9203

1 Plaintiffs MARK WILLIAMS, JORGE MEDINA and DERRIELL THOMAS (hereinafter
2 “PLAINTIFFS”), individually and on behalf of all those similarly situated, demanding a jury trial,
3 hereby alleges as follows:

4 **THE PARTIES**

5 **A. Defendants**

6 1. Defendant WEB TO DOOR CORP (“Defendant Web to Door”) is a Nevada
7 Corporation and at all relevant times mentioned herein conducted and continues to conduct
8 substantial and regular business in California.

9 2. Defendant Web to Door provides last mile delivery courier service, including same-day
10 delivery routes, business-to-business, business-to-customer, and less than truckload delivery services
11 in California.

12 3. Defendant SOUTH EAST PERSONNEL LEASING, INC. (“Defendant South East”) is
13 a Florida Corporation and at all relevant times mentioned herein conducted and continues to conduct
14 substantial and regular business in California.

15 4. Defendant South East is a staffing agency.

16 5. Defendant Web to Door and Defendant South East were the joint employers of
17 PLAINTIFFS as evidenced by the contracts signed and by the company the PLAINTIFFS performed
18 work for respectively and are therefore jointly responsible as employers for the conduct alleged
19 herein and collectively referred to herein as “DEFENDANTS”.

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

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

9 8. At all relevant times herein, DEFENDANTS were the joint employers of PLAINTIFFS
10 and CLASS MEMEBERS, as defined below. PLAINTIFFS are informed and believes, and thereon
11 alleges, that at all times material to this complaint DEFENDANTS were the alter egos, divisions,
12 affiliates, integrated enterprises, joint employers, subsidiaries, parents, principles, related entities,
13 co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible,
14 of each other. Each Defendant was completely dominated by his, her or its co-defendant, and each
15 was the alter ego of the other.

16 9. At all relevant times herein, PLAINTIFFS and the CLASS MEMBERS were employed
17 by DEFENDANTS under employment agreements that were partly written, partly oral, and partly
18 implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them,
19 acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFFS and
20 the CLASS MEMEBRS all wages earned and due, through methods and schemes which include, but
21 are not limited to, failing to pay overtime premiums, failing to provide rest and meal periods, failing
22 to properly maintain records, failing to provide accurate itemized statements for each pay period,
23 failing to properly compensate PLAINTIFFS and the CLASS MEMEBRS for necessary
24 expenditures, and requiring, permitting or suffering the employee to work off the clock, in violation
25 of the California Labor Code and the applicable Welfare Commission ("IWC") Order.

26 10. PLAINTIFFS are informed and believes, and thereon alleges, that each and every one
27 of the acts and omissions alleged herein were performed by, and/or attributable to, all
28 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control of

each of the other DEFENDANTS, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

11. As a direct and proximate result of the unlawful actions of DEFENDANTS, PLAINTIFFS and the CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings in amounts as yet unascertained, but subject to proof of trial, and within the jurisdiction of this Court.

B. PLAINTIFFS and Class Members

12. Plaintiff Mark Williams has been employed by DEFENDANTS in the State of California, County of San Francisco since December 2019, as a non-exempt employee, paid on an hourly basis plus bonuses, and entitled to legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

13. Plaintiff Jorge Medina was employed by DEFENDANTS in the State of California, County of San Francisco from April 2019 to March 2020, as a non-exempt employee, paid on an hourly basis plus bonuses, and entitled to legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

14. Plaintiff Derriell Thomas has been employed by DEFENDANTS in the State of California, County of San Francisco since 2017, as a non-exempt employee, paid on an hourly basis plus bonuses, and entitled to legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

15. PLAINTIFFS brings this case as a class action pursuant to California Code of Civil Procedure § 382 on behalf of all current and former non-exempt employees who worked for Defendant South East and/or Defendant Web to Door in California (“CLASS MEMBERS”) at any time within the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined the Court (“CLASS PERIOD”). To the extent equitable tolling operates to toll claims by PLAINTIFFS and the CLASS MEMBERS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly. PLAINTIFFS reserve the right to amend the class definition before the Court determines whether class certification is appropriate, or thereafter upon leave of Court.

16. PLAINTIFFS, brings this action on behalf of the CLASS MEMBERS against the

1 DEFENDANTS to recover, among other things, wages and penalties from unpaid wages earned and
2 due, including but not limited to unpaid minimum wages, unpaid and illegally calculated overtime
3 compensation, illegal meal and rest period policies, failure to pay all wages due to discharged and
4 quitting employees, failure to indemnify employees for necessary expenditures and/or losses incurred
5 in discharging their duties, failure to provide accurate itemized wage statements, failure to maintain
6 required records, and interest, attorney's fees, costs, and expenses. The amount in controversy for the
7 aggregate claim of the CLASS MEMBERS during the CLASS PERIOD is under five million dollars
8 (\$5,000,000.00).

9 **JURISDICTION AND VENUE**

10 17. The Superior Court of the State of California has jurisdiction in this matter because
11 PLAINTIFFS is resident of the State of California, and DEFENDANTS were and are doing business
12 in California. Further, no federal question is at issue because the claims are based solely on California
13 law.

14 18. Venue is proper in this judicial district and the County of San Francisco, California
15 because PLAINTIFFS, and the CLASS MEMBERS, performed work for DEFENDANTS in the
16 County of San Francisco, DEFENDANTS maintain offices and facilities and transact business in the
17 County of San Francisco, and because DEFENDANTS' illegal payroll policies and practices which
18 are the subject of this action were applied, at least in part, to PLAINTIFFS, and other persons similarly
19 situated, in the County of San Francisco.

20 **THE CONDUCT**

21 **A. Overtime – Regular Rate Violation**

22 19. During the CLASS PERIOD, DEFENDANTS failed and continue to fail to accurately
23 calculate and pay PLAINTIFFS and the other CLASS MEMBERS for their overtime hours worked.
24 As a result, PLAINTIFFS and the other CLASS MEMBERS forfeited wages due them for working
25 overtime without compensation at the correct overtime rates. DEFENDANTS' uniform policy and
26 practice to not pay the CLASS MEMBERS the correct overtime rate for all overtime worked in
27 accordance with applicable law is evidenced by DEFENDANTS' business records.

28 20. State law provides that employees must be paid overtime at one-and-one-half times their

1 “regular rate of pay.” PLAINTIFFS and other CLASS MEMBERS were compensated at an hourly
2 rate plus flat-sum incentive pay that was tied to specific elements of an employee’s performance.

3 21. The second component of PLAINTIFFS’s and other CLASS MEMBERS’ compensation
4 was DEFENDANTS’ non-discretionary incentive program that paid PLAINTIFFS and other CLASS
5 MEMBERS various incentives, including flat-sum incentive wages, based on their performance for
6 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
7 basis with bonus compensation when the employees met the various performance goals set by
8 DEFENDANTS. However, when calculating the regular rate of pay, in those pay periods where
9 PLAINTIFFS and other CLASS MEMBERS worked overtime and earned this non-discretionary
10 bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part
11 of the employees’ “regular rate of pay” and/or calculated all hours worked rather than just all non-
12 overtime hours worked. Management and supervisors described the incentive/bonus program to
13 potential and new employees as part of the compensation package. As a matter of law, the incentive
14 compensation received by PLAINTIFFS and other CLASS MEMBERS must be included in the
15 “regular rate of pay.” The failure to do so has resulted in a systematic underpayment of overtime
16 compensation to PLAINTIFFS and other CLASS MEMBERS by DEFENDANTS.

17 22. In violation of the applicable sections of the California Labor Code and the requirements
18 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
19 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFFS and
20 the other CLASS MEMBERS at the correct rate of pay for all overtime worked. This uniform policy
21 and practice of DEFENDANT is intended to purposefully avoid the payment of the correct overtime
22 compensation as required by California law which allowed DEFENDANTS to illegally profit and gain
23 an unfair advantage over competitors who complied with the law.

24 **B. Missed Meal and Rest Period Violation**

25 23. During the CLASS PERIOD, PLAINTIFFS and other CLASS MEMBERS, as a result
26 of their rigorous delivery schedules and not being relieved of their cordless communication devices
27 during what should be duty free meal and rest periods, PLAINTIFFS and other CLASS MEMBERS
28 were, from time-to-time, unable to take off duty meal breaks and were not fully relieved of duty for

meal periods. PLAINTIFFS and other CLASS MEMBERS were required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFFS and CLASS MEMBERS with a second off-duty meal period from time to time in which these employees were required by DEFENDANTS to work ten (10) hours of work. PLAINTIFFS and the other CLASS MEMBERS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

24. During the CLASS PERIOD, PLAINTIFFS and other CLASS MEMBERS, as a result of their rigorous delivery schedules and not being relieved of their cordless communication devices during what should be duty free meal and rest periods, were also required from time-to-time to work in excess of four (4) hours without being provided ten (10) minute duty free 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. PLAINTIFFS and other CLASS MEMBERS were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and other CLASS MEMBERS were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers. Even when afforded rest periods, DEFENDANTS required PLAINTIFFS and other CLASS MEMBERS to remain on the premises and on duty during those breaks.

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

25. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continue to fail to accurately pay PLAINTIFFS and the other CLASS MEMBERS for all hours worked. Specifically, DEFENDANTS from time-to-time required PLAINTIFFS and the other CLASS MEMBERS to perform work while off-the clock during what should have been duty-free and uncompensated meal periods. Notwithstanding, from time-to-time DEFENDANTS failed to pay PLAINTIFFS and other CLASS MEMBERS necessary wages for performing work at DEFENDANTS' direction, request and benefit, while off-the clock during meal periods.

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

27. DEFENDANTS controlled the work schedules, duties, protocols, applications, assignments and employment conditions of PLAINTIFFS and the CLASS MEMBERS.

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

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

30. DEFENDANTS' policies and practices deprived PLAINTIFFS and the other CLASS MEMBERS of all minimum, regular and overtime wages owed for the off-the-clock work activities, including those performed while off the clock during meal periods. Because PLAINTIFFS and the other CLASS MEMBERS typically worked over 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

31. DEFENDANTS knew or should have known that PLAINTIFFS and the other CLASS MEMBERS off-the-clock work was compensable under the law.

32. As a result, PLAINTIFFS and the other CLASS MEMBERS forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent attending required meetings and sales trainings. DEFENDANTS' uniform policy and practice to not pay PLAINTIFFS and the CLASS MEMBERS wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

E. Unreimbursed Business Expenses

33. During the CLASS PERIOD, DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFFS and the other CLASS MEMBERS for required business expenses incurred by PLAINTIFFS and other the CLASS MEMBERS 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."

34. In the course of their employment, PLAINTIFFS and the other CLASS MEMBERS as a business expense, were required by DEFENDANTS to use personal cellular phones and sometimes their personal vehicles as a result of and in furtherance of their job duties as employees for DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost associated with the use of the personal cellular phones and vehicles for DEFENDANTS' benefit, without reimbursement from the DEFENDANTS in violation of California Labor Code Section 2802. As a result, in the course of their employment with DEFENDANTS, PLAINTIFFS and the other CLASS MEMBERS 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.

F. Inaccurate Itemized Wage Statements

35. When PLAINTIFFS and other CLASS MEMBERS worked overtime in the same pay period they earned incentive wages and/or missed meal and rest breaks, and/or performed off-the-clock work, DEFENDANTS failed to provide PLAINTIFFS and the other CLASS MEMBERS with complete and accurate wage statements which failed to show, among other things, the correct amount of gross and net wages earned for the applicable pay period, the correct number of total hours worked, and the correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, the correct amount of gross and net wages earned for the applicable pay period, the correct number of total hours worked, and the correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Aside, from the violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFFS and the CLASS MEMBERS an

itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time-to-time during the CLASS PERIOD, DEFENDANT provided PLAINTIFFS and the other CLASS MEMBERS with wage statements which violated Cal. Lab. Code § 226.

G. Unfair Competition

36. By reason of the aforementioned uniform conduct applicable to PLAINTIFFS and all CLASS MEMBERS during the CLASS PERIOD, DEFENDANTS committed acts of unfair competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the “UCL”), by engaging, *inter alia*, in a company-wide policy and procedure which failed to accurately calculate and record the correct overtime rate for the overtime worked by PLAINTIFFS and other CLASS MEMBERS in those pay periods where the PLAINTIFFS and the CLASS MEMBERS earned a flat sum non-discretionary bonus, failing to provide legally compliant duty-free meal periods, failure to pay all minimum, regular and overtime wages resulting from off-the-clock-work. The proper calculation of these employees’ total number of hours worked and rates of pay is the DEFENDANTS’ burden. As a result of DEFENDANTS’ intentional disregard of the obligation to meet this burden, DEFENDANTS failed to properly calculate and/or pay all required minimum, regular and overtime compensation for work performed by the PLAINTIFFS and the CLASS MEMBERS and violated the California Labor Code and regulations promulgated thereunder as herein alleged.

37. Specifically, as to PLAINTIFFS’s pay, DEFENDANTS provided compensation to him in the form of two components. One component of PLAINTIFFS’s compensation was a base hourly wage. The second component of PLAINTIFFS’s compensation were non-discretionary incentive wages. DEFENDANTS paid the incentive wages, so long as PLAINTIFFS met certain predefined performance requirements. PLAINTIFFS met DEFENDANTS’ predefined eligibility performance requirements in various pay periods throughout his employment with DEFENDANTS and DEFENDANTS paid PLAINTIFFS the incentive wages. However, when calculating the regular rate of pay, in those pay periods where PLAINTIFFS and other CLASS MEMBERS worked overtime and earned this flat-sum non-discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part of the employees’ “regular rate of pay” and/or calculated all

hours worked rather than just all non-overtime hours worked and thereby underpaid PLAINTIFFS and other CLASS MEMBERS for overtime worked throughout their employment with DEFENDANTS. The incentive compensation paid by DEFENDANTS constituted wages within the meaning of the California Labor Code and thereby should have been part of PLAINTIFFS's "regular rate of pay." PLAINTIFFS was also from time to time unable to take off duty meal and rest breaks and was not fully relieved of duty for his meal periods. PLAINTIFFS was required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFFS with a second off-duty meal period from time to time in which he was required by DEFENDANTS to work ten (10) hours of work. PLAINTIFFS therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANTS strict corporate policy and practice. DEFENDANTS also provided PLAINTIFFS with a paystub that failed to accurately display PLAINTIFFS's correct rates of overtime pay and payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANTS have not fully paid PLAINTIFFS the overtime compensation still owed to him. The amount in controversy for PLAINTIFFS individually does not exceed the sum or value of \$75,000.

CLASS ACTION ALLEGATIONS

38. PLAINTIFFS bring this case as a class action pursuant to California Code of Civil Procedure § 382 on behalf of the CLASS MEMBERS that worked for Defendant South East and/or Defendant Web to Door in California during the CLASS PERIOD and during the "LABOR CODE CLASS PERIOD", meaning at any time within the period beginning three (3) years prior to the filing of this Complaint and ending on the date as determined the Court.

39. During the CLASS PERIOD and the LABOR CODE CLASS PERIOD, PLAINTIFFS and the other CLASS MEMBERS have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid and miscalculated overtime compensation, illegal meal and rest period policies, failure to reimburse for incurred business related expenses, failure to pay all wages due to discharged and quitting employees, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, attorney's fees, costs, and expenses.

1 40. The members of the class are so numerous that joinder of all class members is
2 impractical.

3 41. Common questions of law and fact regarding DEFENDANTS' conduct with respect to
4 unpaid and/or miscalculated overtime wages paid to PLAINTIFFS and the CLASS MEMBERS and
5 failing to provide legally compliant meal and rest periods, failure to make reimbursements for business
6 related expenses, and failure to provide accurate itemized wage statements accurate, exist as to all
7 CLASS MEMBERS and predominate over any questions affecting solely any individual members of
8 the class. Among the questions of law and fact common to the class are:

9 a. Whether DEFENDANTS failed to pay PLAINTIFFS and the other CLASS
10 MEMBERS the correct rate of pay for all overtime hours worked;

11 b. Whether DEFENDANTS' incentive compensation program is non-discretionary;

12 c. Whether DEFENDANTS miscalculated the regular rate of pay in those pay
13 periods where PLAINTIFFS and other CLASS MEMBERS worked overtime and earned a
14 bonus;

15 d. Whether DEFENDANTS maintained legally compliant meal and rest period
16 policies;

17 e. Whether DEFENDANTS required PLAINTIFFS and the CLASS MEMBERS to
18 use their personal cell phones in further and in direction execution of their job duties;

19 f. Whether DEFENDANTS failed to provide accurate itemized wage statements to
20 PLAINTIFFS and the CLASS MEMBERS;

21 g. Whether PLAINTIFFS and the CLASS MEMBERS have been required to
22 follow uniform procedures and policies regarding their work for DEFENDANTS;

23 42. PLAINTIFFS is a CLASS MEMBER and suffered damages as a result of
24 DEFENDANTS' conduct and actions alleged herein.

25 43. PLAINTIFFS'S claims are typical of the claims of the class, and PLAINTIFFS has the
26 same interests as the other members of the class.

27 44. PLAINTIFFS will fairly and adequately represent and protect the interests of the class.
28 PLAINTIFFS has retained able counsel experienced in class action litigation. The interests of

1 PLAINTIFFS are coincident with, and not antagonistic to, the interests of the other CLASS
2 MEMBERS.

3 45. The questions of law and fact common to the members of the class predominate over
4 any questions affecting only individual members, including legal and factual issues relating to liability
5 and damages.

6 46. A class action is superior to other available methods for the fair and efficient
7 adjudication of this controversy because joinder of all class members is impractical. Moreover, since
8 the damages suffered by individual members of the class may be relatively small, the expense and
9 burden of individual litigation makes it practically impossible for the members of the class
10 individually to redress the wrongs done to them. The class is readily definable and prosecution of this
11 action as a class action will eliminate the possibility of repetitive litigation. There will be no difficulty
12 in the management of this action as a class action.

13 **FIRST CAUSE OF ACTION**

14 **UNLAWFUL BUSINESS PRACTICES**

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

16 **(By PLAINTIFFS and the CLASS MEMBERS against DEFENDANTS)**

17 47. PLAINTIFFS, and the CLASS MEMBERS, reallege and incorporate by this reference,
18 as though fully set forth herein, the prior paragraphs of this Complaint.

19 48. DEFENDANTS are each a “person” as that term is defined under Cal. Bus. And Prof.
20 Code § 17021.

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

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

1 this chapter, or as may be necessary to restore to any person in interest any
2 money or property, real or personal, which may have been acquired by
3 means of such unfair competition.”

4 (Cal. Bus. & Prof. Code § 17203).

5 50. From time-to-time during the CLASS PERIOD, by the conduct alleged herein,
6 DEFENDANTS have engaged and continues to engage in a business practice which violates
7 California law, including but not limited to, the applicable Wage Order(s), the California Code of
8 Regulations and the California Labor Code including Sections 201, 202, 203, 204, 206.5, 226, 226.3,
9 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1198, for which this Court should issue declaratory and
10 other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and
11 remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully
12 withheld.

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

18 52. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and fraudulent
19 in that DEFENDANTS’ uniform policy and practice failed to pay PLAINTIFFS and the other CLASS
20 MEMBERS wages due pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
21 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
22 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of
23 wages wrongfully withheld.

24 53. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful, unfair and
25 deceptive in that DEFENDANTS’ employment practices caused PLAINTIFFS and the CLASS
26 MEMBERS to be underpaid during their employment with DEFENDANTS.

27 54. By the conduct alleged herein, DEFENDANTS’ practices were also unfair and deceptive
28 in that DEFENDANTS’ uniform policies, practices and procedures failed to provide mandatory meal

and/or rest breaks to PLAINTIFFS and the CLASS MEMBERS.

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

56. PLAINTIFFS further demand on behalf of himself and on behalf of each CLASS MEMBER, one (1) hour of pay at the regular rate of compensation for each workday in which a rest period was not timely provided as required by law.

57. By and through the unlawful and unfair business practices described herein, DEFENDANTS have obtained valuable property, money and services from PLAINTIFFS and the other CLASS MEMBERS, including earned wages and unreimbursed business related expenses, and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly compete against competitors who comply with the law.

58. All the acts described herein as violations of, among other things, the Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were 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.*

59. PLAINTIFFS and the other CLASS MEMBERS are entitled to, and do, seek such relief as may be necessary to restore to them the money and property which DEFENDANTS have acquired, or of which PLAINTIFFS and the other CLASS MEMBERS have been deprived, by means of the above described unlawful and unfair business practices, including earned but unpaid wages.

60. PLAINTIFFS and the other CLASS MEMBERS 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.

61. PLAINTIFFS and the other CLASS MEMBERS 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, PLAINTIFFS and the CLASS MEMBERS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANTS are restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME COMPENSATION

(Cal. Lab. Code §§ 204, 510, 1194, 1198 and IWC Wage Order No. 4-2001, §3)

(By PLAINTIFFS and the CLASS MEMBERS against DEFENDANTS)

62. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the allegations in the preceding paragraphs.

63. Pursuant to California Labor Code §§ 510, 1194, and Wage Order No. 4-2001, § 3, DEFENDANTS are required to compensate PLAINTIFFS and the CLASS MEMBERS for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

64. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 4-2001. From time-to-time during the LABOR CODE CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFFS and the CLASS MEMBERS for all overtime hours worked as required under the forgoing provisions of the California Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194, and IWC Wage Order No. 4-2001, § 3; requiring, permitting or suffering PLAINTIFFS and CLASS MEMBERS to work off the clock; requiring, permitting or suffering PLAINTIFFS and the CLASS MEMBERS to work through meal and rest breaks; illegally

1 and inaccurately recording time in which PLAINTIFFS and the CLASS MEMBERS worked; failing
2 to properly maintain PLAINTIFFS'S and CLASS MEMBERS' records; failing to provide accurate
3 itemized wage statements to PLAINTIFFS for each pay period; and other methods to be discovered.
4 From time-to-time during the LABOR CODE CLASS PERIOD, DEFENDANTS failed to compensate
5 PLAINTIFFS and the CLASS MEMBERS for all overtime hours worked and to pay the amount of
6 overtime wages due as required by the California Labor Code and IWC Wage Order by failing and
7 refusing to include all compensation, including commissions and bonuses earned, due and owing
8 and/or paid, in the regular rate of pay from which overtime wages were calculated and paid. During
9 the LABOR CODE CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFFS and the
10 CLASS MEMBERS for all overtime hours worked and to pay the amount of overtime wages due as
11 required by the California Labor Code and IWC Wage Order by incorrectly calculating the regular rate
12 of pay from which overtime wages were calculated and paid.

13 65. In violations of California Law, DEFENDANTS have knowingly and willfully refused
14 to perform their obligations to compensate PLAINTIFFS and the CLASS MEMBERS for all wages
15 earned and all hours worked. As a proximate result, PLAINTIFFS and the CLASS MEMBERS have
16 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
17 interest on such wages, and expenses and attorney's fees in seeking to compel DEFENDANTS to fully
18 perform their obligations under state law, all to their respective damages in amounts according to
19 proof at time of trial, and within the jurisdiction of this Court.

20 66. DEFENDANTS' conduct described herein violates California Labor Code §§ 510, 1194,
21 1198 and IWC Wage Order No. 5-2001, § 3. Therefore, pursuant to California Labor Code §§ 200,
22 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code and
23 IWC Wage Orders, PLAINTIFFS and the CLASS MEMBERS are entitled to recover the unpaid
24 balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorney's fees, expenses,
25 and costs of suit.

26
27
28 ///

THIRD CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Cal. Lab. Code §§ 1194, 1197, 1197.1 and IWC Wage Order No. 4-2001, § 4)

(By PLAINTIFFS and the CLASS MEMBERS against DEFENDANTS)

67. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the allegations in the preceding paragraphs.

68. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 4-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

69. From time-to-time during the LABOR CODE CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFFS and the CLASS MEMBERS minimum wages for all hours worked by, among other things: requiring, permitting, or suffering PLAINTIFFS and the CLASS MEMBERS to work off the clock; requiring, permitting or suffering PLAINTIFFS and the CLASS MEMBERS to work through meal and rest breaks; illegally and inaccurately recording time in which PLAINTIFFS and the CLASS MEMBERS worked; failing to properly maintain PLAINTIFFS'S and CLASS MEMBERS' records; failing to provide accurate itemized wage statements to PLAINTIFFS for each pay period; and other methods to be discovered.

70. DEFENDANTS' conduct described herein violates California Labor Code §§ 1194, 1197, and IWC Wage Order No. 4-2001, § 4. As a proximate result of the aforementioned violations, PLAINTIFFS and the CLASS MEMBERS have been damaged in an amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code and IWC Wage Orders, PLAINTIFFS and the CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorney's fees, expenses, and costs of suit.

///

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS

(Cal. Lab. Code §§ 226.7, 512 and IWC Wage Order No. 4-2001, §11)

(By PLAINTIFFS and the CLASS MEMBERS Against DEFENDANTS)

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

72. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS failed to provide legally compliant meal periods to PLAINTIFFS and CLASS MEMBERS as required under California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 4-2001, § 11.

73. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage Order No. 4-2001, § 11 by failing to pay PLAINTIFFS and CLASS MEMBERS who were not provided with a legally compliant meal period, in accordance with the applicable wage order, one additional hour of compensation at each employee's regular rate of pay for each workday that a rest period was not provided.

74. From time to time during the LABOR CODE CLASS PERIOD, DEFENDANTS failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other CLASS MEMBERS as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFFS and the 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, PLAINTIFFS and other CLASS MEMBERS were, from time to time, not fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFFS and the CLASS MEMBERS legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records. As a result, PLAINTIFFS and other members of the CLASS MEMBERS forfeited meal breaks without additional compensation during the LABOR CODE CLASS PERIOD and in accordance with DEFENDANTS' strict corporate policy and practice.

75. During the LABOR CODE CLASS PERIOD, DEFENDANTS further violated

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

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

FIFTH CAUSE OF ACTION

Failure to Provide Required Rest Periods

[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 4-2001, § 12]

(By PLAINTIFFS and CLASS MEMBERS Against DEFENDANTS)

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

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

79. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by, during the LABOR CODE CLASS PERIOD, failing to compensate PLAINTIFFS and CLASS MEMBERS who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

///

1 **SEVENTH CAUSE OF ACTION**

2 **Failure to Furnish Accurate Itemized Wage Statements**

3 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 4-2001, § 7]**

4 **(By PLAINTIFFS and the CLASS MEMBERS Against DEFENDANTS)**

5 85. PLAINTIFFS and the other CLASS MEMBERS incorporate herein by specific
6 reference, as though fully set forth, the allegations in the preceding paragraphs.

7 86. During the LABOR CODE CLASS PERIOD from time-to-time, DEFENDANTS
8 routinely failed to provide PLAINTIFFS and the CLASS MEMBERS with timely, accurate and
9 itemized wage statements in writing showing each employee's gross wages and earned, total hours
10 worked, all deductions made, net wages earned, the name and address of the legal entity or entities
11 employing PLAINTIFFS and CLASS MEMBERS, and all applicable hourly rates in effect during
12 each pay period and the corresponding number of hours worked at each hourly rate, in violation of
13 California Labor Code § 226 and IWC Wage Order No. 4-2001, § 7.

14 87. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed to
15 provide PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized wage statements in
16 accordance with California Labor Code § 226(a).

17 88. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFFS
18 and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek all
19 wages earned and due, plus interest thereon. Additionally, PLAINTIFFS and the other CLASS
20 MEMBERS are entitled to all available statutory penalties, including, but not limited to civil penalties
21 pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and
22 reasonable attorney's fees, including but not limited to those provided in California Labor Code §
23 226(e), as well as other available remedies.

24
25
26
27
28 ///

EIGHTH CAUSE OF ACTION

Failure to Pay All Wages Due to Discharged and Quitting Employees

[Cal. Labor Code §§ 201, 202, 203]

(By PLAINTIFFS and the CLASS MEMBERS Against DEFENDANTS)

89. PLAINTIFFS and the other CLASS MEMBERS incorporate herein by specific reference, as though fully set forth, the allegations in the preceding paragraphs.

90. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

91. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 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.

92. California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wage of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to 30 workdays.

93. During the LABOR CODE CLASS PERIOD, as alleged herein, DEFENDANTS have willfully failed to pay accrued wages and other compensation, including but not limited to, minimum, regular and overtime wages for all hours worked, to CLASS MEMBERS in accordance with California Labor Code §§ 201 and 202. As a result, PLAINTIFFS and the CLASS MEMBERS are entitled to all available statutory penalties, including the waiting time penalties provided in California Labor Code § 203, together with interest thereon, as well as other available remedies.

94. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFFS and the other CLASS MEMBERS have been deprived of compensation in an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California

1 Labor Code §§ 1194 and 2699.

2 **NINTH CAUSE OF ACTION**

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

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

5 **(Alleged by Plaintiff Mark Williams against all Defendants)**

6 95. Plaintiff Williams realleges and incorporates by this reference, as though fully set forth
7 herein, the prior paragraphs of this Complaint.

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

17 97. Plaintiff Williams, and such persons that may be added from time to time who satisfy
18 the requirements and exhaust the administrative procedures under the Private Attorney General Act,
19 bring this Representative Action on behalf of the State of California with respect to themselves and
20 all individuals who are or previously were employed by DEFENDANT and classified as non-exempt
21 employees in California during the time period of October 5, 2019 until the present (the
22 "AGGRIEVED EMPLOYEES").

23 98. On October 5, 2020 Plaintiff Williams gave written notice by certified mail to the
24 Labor and Workforce Development Agency (the "Agency") and the employer of the specific
25 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
26 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period
27 for PLAINTIFFS to add these allegations to the Complaint has expired. As a result, pursuant to
28 Section 2699.3, Plaintiff Williams may now commence a representative civil action under PAGA

pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

99. The policies, acts and practices heretofore described were and are an unlawful business act or practice because Defendant (a) failed to properly record and pay Plaintiff Williams and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct. Plaintiff Williams hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on Plaintiff Williams and the other AGGRIEVED EMPLOYEES.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS, individually and on behalf of all other persons similarly situated, respectfully pray for relief against DEFENDANTS and DOES 1 through 50, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to PLAINTIFFS and CLASS MEMBERS, as well as disgorged profits from DEFENDANTS' unfair and unlawful business practices;
3. For meal and rest period compensation pursuant to California Labor Code § 226.7 and IWC Wage Order No. 4-2001;
4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from engaging in the unlawful business practices complained herein;
6. For waiting time penalties pursuant to California Labor Code § 203;

7. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the California Labor Code §§ 226(e) and §§ 2698-2699.5;

8. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;

9. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004;

10. For reasonable attorney's fees and costs pursuant to California Labor Code §§ 1194, 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions providing for attorneys' fees and costs;

11. For declaratory relief;

12. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action as a class action;

13. For an order appointing PLAINTIFFS as class representative, and PLAINTIFFS'S counsel as class counsel; and

14. For such further relief that the Court may deem just and proper.

Dated: December 9, 2020

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

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFFS

DEMAND FOR JURY TRIAL

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

Dated: December 9, 2020

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

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFFS

EXHIBIT 1



Client #31401

October 5, 2020

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

South East Personnel Leasing, Inc. c/o Cogency Global Inc. 1325 J. Street, Suite 1550 Sacramento, CA 14	Web to Door Corp. c/o National Registered Agents, Inc. 818 West Seventh Street, Suite 930 Los Angeles, CA 90017
---	---

Re: Notice of Violations of California Labor Code Sections 201, 202, 203, 204, 221, 223, 226(a), 226.2, 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, 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 Mark Williams (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against South East Personnel Leasing, Inc. and Web to Door Corp. (“Defendants”). Plaintiff has been employed by Defendants in California since December 2019 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control, including overtime. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, including overtime wages and minimum wages, and for all of their missed meal and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 221, 223, 226(a), 226.2, 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

Sincerely,



Shani O. Zakay
Attorney for Mark Williams

JCL LAW FIRM, APC

JEAN-CLAUDE LAPUYADE, ESQ. (SBN 248676)

3990 OLD TOWN AVENUE, SUITE C204

SAN DIEGO, CA 92110

TEL: (619) 599-8292

FAX: (619) 599-8291

ZAKAY LAW GROUP, APLC

SHANI O. ZAKAY (STATE BAR #277924)

5850 OBERLIN DRIVE, SUITE 230A

SAN DIEGO, CA 92121

TEL: (619) 255-9047

FAX: (858) 404-9203

ATTORNEYS FOR PLAINTIFF OSCAR ALMANZA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MARK WILLIAMS, individually and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

SOUTH EAST PERSONNEL LEASING,
INC., a Florida corporation; WEB TO DOOR
CORP., a Nevada corporation; and DOES 1
through 50, Inclusive,

Defendants.

Case No. _____

COMPLAINT

CLASS ACTION:

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
EMPLOYEES 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

8. FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203

JURY TRIAL DEMANDED

Plaintiff MARK WILLIAMS (hereinafter “PLAINTIFF”), individually and on behalf of all those similarly situated, demanding a jury trial, hereby alleges as follows:

THE PARTIES

A. Defendants

1. Defendant WEB TO DOOR CORP (“Defendant Web to Door”) is a Nevada Corporation and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in California.

2. Defendant Web to Door provides delivery services in California.

3. Defendant SOUTH EAST PERSONNEL LEASING, INC. (“Defendant South East”) is a Florida Corporation and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in California.

4. Defendant South East is a staffing agency.

5. Defendant Web to Door and Defendant South East were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS”.

1. 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

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

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

12 3. At all relevant times herein, DEFENDANTS were the joint employers of PLAINTIFF
13 and CLASS MEMEBERS, as defined below. PLAINTIFF is informed and believes, and thereon
14 alleges, that at all times material to this complaint DEFENDANTS were the alter egos, divisions,
15 affiliates, integrated enterprises, joint employers, subsidiaries, parents, principles, related entities, co-
16 conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of
17 each other. Each Defendant was completely dominated by his, her or its co-defendant, and each was
18 the alter ego of the other.

19 4. At all relevant times herein, PLAINTIFF and the CLASS MEMBERS were employed
20 by DEFENDANTS under employment agreements that were partly written, partly oral, and partly
21 implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them,
22 acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFF and
23 the CLASS MEMEBRS all wages earned and due, through methods and schemes which include, but
24 are not limited to, failing to pay overtime premiums, failing to provide rest and meal periods, failing
25 to properly maintain records, failing to provide accurate itemized statements for each pay period,
26 failing to properly compensate PLAINTIFF and the CLASS MEMEBRS for necessary expenditures,
27 and requiring, permitting or suffering the employee to work off the clock, in violation of the
28 California Labor Code and the applicable Welfare Commission (“IWC”) Order.

1 5. PLAINTIFF is informed and believes, and thereon alleges, that each and every one of
2 the acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS,
3 each acting as agents and/or employees, and/or under the direction and control of each of the other
4 DEFENDANTS, and that said acts and failures to act were within the course and scope of said
5 agency, employment and/or direction and control.

6 6. As a direct and proximate result of the unlawful actions of DEFENDANTS,
7 PLAINTIFF and the CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings
8 in amounts as yet unascertained, but subject to proof of trial, and within the jurisdiction of this Court.

9 **B. Plaintiffs and Class Members**

10 7. Plaintiff has been employed by DEFENDANTS in the State of California, County of
11 San Francisco since December 2019, as a non-exempt employee, paid on an hourly basis plus
12 bonuses, and entitled to legally required meal and rest periods and payment of minimum and
13 overtime wages due for all time worked.

14 8. PLAINTIFF brings this case as a class action pursuant to California Code of Civil
15 Procedure § 382 on behalf of all current and former non-exempt employees who worked for
16 Defendant South East and/or Defendant Web to Door in California (“CLASS MEMBERS”) at any
17 time within the period beginning four (4) years prior to the filing of this Complaint and ending on the
18 date as determined the Court (“CLASS PERIOD”). To the extent equitable tolling operates to toll
19 claims by PLAINTIFF and the CLASS MEMBERS against DEFENDANTS, the CLASS PERIOD
20 should be adjusted accordingly. PLAINTIFF reserves the right to amend the class definition before
21 the Court determines whether class certification is appropriate, or thereafter upon leave of Court.

22 9. PLAINTIFF, brings this action on behalf of the CLASS MEMBERS against the
23 DEFENDANTS to recover, among other things, wages and penalties from unpaid wages earned and
24 due, including but not limited to unpaid minimum wages, unpaid and illegally calculated overtime
25 compensation, illegal meal and rest period policies, failure to pay all wages due to discharged and
26 quitting employees, failure to indemnify employees for necessary expenditures and/or losses incurred
27 in discharging their duties, failure to provide accurate itemized wage statements, failure to maintain
28 required records, and interest, attorney’s fees, costs, and expenses. The amount in controversy for the

1 aggregate claim of the CLASS MEMBERS during the CLASS PERIOD is under five million dollars
2 (\$5,000,000.00).

3 **JURISDICTION AND VENUE**

4 10. The Superior Court of the State of California has jurisdiction in this matter because
5 PLAINTIFF is resident of the State of California, and DEFENDANTS were and are doing business in
6 California. Further, no federal question is at issue because the claims are based solely on California
7 law.

8 11. Venue is proper in this judicial district and the County of San Francisco, California
9 because PLAINTIFF, and the CLASS MEMBERS, performed work for DEFENDANTS in the
10 County of San Francisco, DEFENDANTS maintain offices and facilities and transact business in the
11 County of San Francisco, and because DEFENDANTS' illegal payroll policies and practices which
12 are the subject of this action were applied, at least in part, to PLAINTIFFS, and other persons
13 similarly situated, in the County of San Francisco.

14 **THE CONDUCT**

15 **A. Overtime – Regular Rate Violation**

16 12. During the CLASS PERIOD, DEFENDANTS failed and continue to fail to accurately
17 calculate and pay PLAINTIFF and the other CLASS MEMBERS for their overtime hours worked. As
18 a result, PLAINTIFF and the other CLASS MEMBERS forfeited wages due them for working
19 overtime without compensation at the correct overtime rates. DEFENDANTS' uniform policy and
20 practice to not pay the CLASS MEMBERS the correct overtime rate for all overtime worked in
21 accordance with applicable law is evidenced by DEFENDANTS' business records.

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

25 14. The second component of PLAINTIFF's and other CLASS MEMBERS' compensation
26 was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and other CLASS
27 MEMBERS various incentives, including flat-sum incentive wages, based on their performance for
28 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly

basis with bonus compensation when the employees met the various performance goals set by DEFENDANTS. However, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and other CLASS MEMBERS worked overtime and earned this non-discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. Management and supervisors described the incentive/bonus program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and other CLASS MEMBERS must be included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment of overtime compensation to PLAINTIFF and other CLASS MEMBERS by DEFENDANTS.

15. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the other CLASS MEMBERS at the correct rate of pay for all overtime worked. This uniform policy and practice of DEFENDANT 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.

B. Missed Meal and Rest Period Violation

16. During the CLASS PERIOD, PLAINTIFF and other CLASS MEMBERS, as a result of their rigorous delivery schedules, PLAINTIFF and other CLASS MEMBERS were, from time-to-time, unable to take off duty meal breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other CLASS MEMBERS were required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF and CLASS MEMBERS with a second off-duty meal period from time to time in which these employees were required by DEFENDANTS to work ten (10) hours of work. PLAINTIFF and the other CLASS MEMBERS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

17. During the CLASS PERIOD, PLAINTIFF and other CLASS MEMBERS, as a result of

their rigorous delivery schedules, were also required from time-to-time to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CLASS MEMBERS were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CLASS MEMBERS were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers. Even when afforded rest periods, DEFENDANTS required PLAINTIFF and other CLASS MEMBERS to remain on the premises and on duty during those breaks.

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

18. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continue to fail to accurately pay PLAINTIFF and the other CLASS MEMBERS for all hours worked. Specifically, DEFENDANTS from time-to-time required PLAINTIFF and the other CLASS MEMBERS to perform work while off-the clock during what should have been duty-free and uncompensated meal periods. Notwithstanding, from time to time DEFENDANTS failed to pay PLAINTIFFS and other CLASS MEMBERS necessary wages for performing work at DEFENDANTS' direction, request and benefit, while off-the clock during meal periods.

19. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFF and the other CLASS MEMBERS.

20. DEFENDANTS controlled the work schedules, duties, protocols, applications, assignments and employment conditions of PLAINTIFFS and the CLASS MEMBERS.

21. DEFENDANTS were able to track the amount of time PLAINTIFF and the other CLASS MEMBERS working; however, DEFENDANTS failed to document, track, or pay PLAINTIFF and the other CLASS MEMBERS all wages earned and owed for all the work they performed, including off-the-clock work.

22. PLAINTIFF and the other CLASS MEMBERS were non-exempt employees, subject to

the requirements of the California Labor Code.

23. DEFENDANTS' policies and practices deprived PLAINTIFF and the other CLASS MEMBERS of all minimum, regular and overtime wages owed for the off-the-clock work activities, including those performed while off the clock during meal periods. Because PLAINTIFF and the other CLASS MEMBERS typically worked over 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

24. DEFENDANTS knew or should have known that PLAINTIFF and the other CLASS MEMBERS off-the-clock work was compensable under the law.

25. As a result, PLAINTIFF and the other CLASS MEMBERS forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent attending required meetings and sales trainings. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the CLASS MEMBERS wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

E. Unreimbursed Business Expenses

26. During the CLASS PERIOD, DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the other CLASS MEMBERS for required business expenses incurred by PLAINTIFF and other the CLASS MEMBERS 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."

27. In the course of their employment, PLAINTIFFS and the other CLASS MEMBERS as a business expense, were required by DEFENDANTS to use personal cellular phones and sometimes their personal vehicles as a result of and in furtherance of their job duties as employees for DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for the cost associated

1 with the use of the personal cellular phones and vehicles for DEFENDANTS' benefit, without
2 reimbursement from the DEFENDANTS in violation of California Labor Code Section 2802. As a
3 result, in the course of their employment with DEFENDANTS, PLAINTIFFS and the other CLASS
4 MEMBERS incurred unreimbursed business expenses which included, but were not limited to costs
5 related to the use of their personal cellular phones, all on behalf of and for the benefit of
6 DEFENDANTS.

7 **F. Inaccurate Itemized Wage Statements**

8 28. When PLAINTIFF and other CLASS MEMBERS worked overtime in the same pay
9 period they earned incentive wages and/or missed meal and rest breaks, and/or performed off-the-
10 clock work, DEFENDANTS failed to provide PLAINTIFF and the other CLASS MEMBERS with
11 complete and accurate wage statements which failed to show, among other things, the correct amount
12 of gross and net wages earned for the applicable pay period, the correct number of total hours worked,
13 and the correct hourly rates in effect during the pay period and the corresponding number of hours
14 worked at each hourly rate. Cal. Lab. Code § 226 provides that every employer shall furnish each of
15 his or her employees with an accurate itemized wage statement in writing showing, among other
16 things, the correct amount of gross and net wages earned for the applicable pay period, the correct
17 number of total hours worked, and the correct hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate. Aside, from the violations listed above in
19 this paragraph, DEFENDANTS failed to issue to PLAINTIFF and the CLASS MEMBERS an
20 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a
21 result, from time-to-time during the CLASS PERIOD, DEFENDANT provided PLAINTIFF and the
22 other CLASS MEMBERS with wage statements which violated Cal. Lab. Code § 226.

23 **G. Unfair Competition**

24 29. By reason of the aforementioned uniform conduct applicable to PLAINTIFF and all
25 CLASS MEMBERS during the CLASS PERIOD, DEFENDANTS committed acts of unfair
26 competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200,
27 *et seq.* (the "UCL"), by engaging, *inter alia*, in a company-wide policy and procedure which failed to
28 accurately calculate and record the correct overtime rate for the overtime worked by PLAINTIFF and

1 other CLASS MEMBERS in those pay periods where the PLAINTIFF and the CLASS MEMBERS
2 earned a flat sum non-discretionary bonus, failing to provide legally compliant duty-free meal periods,
3 failure to pay all minimum, regular and overtime wages resulting from off-the-clock-work. The
4 proper calculation of these employees' total number of hours worked and rates of pay is the
5 DEFENDANTS' burden. As a result of DEFENDANTS' intentional disregard of the obligation to
6 meet this burden, DEFENDANTS failed to properly calculate and/or pay all required minimum,
7 regular and overtime compensation for work performed by the PLAINTIFF and the CLASS
8 MEMBERS and violated the California Labor Code and regulations promulgated thereunder as herein
9 alleged.

10 30. Specifically, as to PLAINTIFF's pay, DEFENDANTS provided compensation to him in
11 the form of two components. One component of PLAINTIFF's compensation was a base hourly
12 wage. The second component of PLAINTIFF's compensation were non-discretionary incentive
13 wages. DEFENDANTS paid the incentive wages, so long as PLAINTIFF met certain predefined
14 performance requirements. PLAINTIFF met DEFENDANTS' predefined eligibility performance
15 requirements in various pay periods throughout his employment with DEFENDANTS and
16 DEFENDANTS paid PLAINTIFF the incentive wages. However, when calculating the regular rate of
17 pay, in those pay periods where PLAINTIFF and other CLASS MEMBERS worked overtime and
18 earned this flat-sum non-discretionary bonus, DEFENDANTS failed to accurately include the non-
19 discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all
20 hours worked rather than just all non-overtime hours worked and thereby underpaid PLAINTIFF and
21 other CLASS MEMBERS for overtime worked throughout their employment with DEFENDANTS.
22 The incentive compensation paid by DEFENDANTS constituted wages within the meaning of the
23 California Labor Code and thereby should have been part of PLAINTIFF's "regular rate of pay."
24 PLAINTIFF was also from time to time unable to take off duty meal and rest breaks and was not fully
25 relieved of duty for his meal periods. PLAINTIFF was required to perform work as ordered by
26 DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break.
27 Further, DEFENDANTS failed to provide PLAINTIFF with a second off-duty meal period from time
28 to time in which he was required by DEFENDANTS to work ten (10) hours of work. PLAINTIFF

therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANTS strict corporate policy and practice. DEFENDANTS also provided PLAINTIFF with a paystub that failed to accurately display PLAINTIFF's correct rates of overtime pay and payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code § 226(a). To date, DEFENDANTS have not fully paid PLAINTIFF the overtime compensation still owed to him. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

CLASS ACTION ALLEGATIONS

31. PLAINTIFF brings this case as a class action pursuant to California Code of Civil Procedure § 382 on behalf of the CLASS MEMBERS that worked for Defendant South East and/or Defendant Web to Door in California during the CLASS PERIOD and during the "LABOR CODE CLASS PERIOD", meaning at any time within the period beginning three (3) years prior to the filing of this Complaint and ending on the date as determined the Court.

32. During the CLASS PERIOD and the LABOR CODE CLASS PERIOD, PLAINTIFF and the other CLASS MEMBERS have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid and miscalculated overtime compensation, illegal meal and rest period policies, failure to reimburse for incurred business related expenses, failure to pay all wages due to discharged and quitting employees, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, attorney's fees, costs, and expenses.

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

34. Common questions of law and fact regarding DEFENDANTS' conduct with respect to unpaid and/or miscalculated overtime wages paid to PLAINTIFF and the CLASS MEMBERS, and failing to provide legally compliant meal and rest periods, failure to make reimbursements for business related expenses, and failure to provide accurate itemized wage statements accurate, exist as to all CLASS MEMBERS 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 failed to pay PLAINTIFF and the other CLASS MEMBERS the correct rate of pay for all overtime hours worked;

- b. Whether DEFENDANTS' incentive compensation program is non-discretionary;
- c. Whether DEFENDANTS miscalculated the regular rate of pay in those pay periods where PLAINTIFFS and other CLASS MEMBERS worked overtime and earned a bonus;
- d. Whether DEFENDANTS maintained legally compliant meal and rest period policies;
- e. Whether DEFENDANTS required PLAINTIFF and the CLASS MEMBERS to use their personal cell phones in further and in direction execution of their job duties;
- f. Whether DEFENDANTS failed to provide accurate itemized wage statements to PLAINTIFFS and the CLASS MEMBERS;
- g. Whether PLAINTIFF and the CLASS MEMBERS have been required to follow uniform procedures and policies regarding their work for DEFENDANTS;

35. PLAINTIFF is a CLASS MEMBER and suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

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

37. PLAINTIFF will fairly and adequately represent and protect the interests of the class. PLAINTIFF has retained able counsel experienced in class action litigation. The interests of PLAINTIFF are coincident with, and not antagonistic to, the interests of the other CLASS MEMBERS.

38. The questions of law and fact common to the members of the class 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. The class is readily definable and prosecution of this

1 action as a class action will eliminate the possibility of repetitive litigation. There will be no difficulty
2 in the management of this action as a class action.

3 **FIRST CAUSE OF ACTION**

4 **UNLAWFUL BUSINESS PRACTICES**

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

6 **(By PLAINTIFF and the CLASS MEMBERS against DEFENDANTS)**

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

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

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

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

22 (Cal. Bus. & Prof. Code § 17203).

23 43. From time-to-time during the CLASS PERIOD, by the conduct alleged herein,
24 DEFENDANTS have engaged and continues to engage in a business practice which violates
25 California law, including but not limited to, the applicable Wage Order(s), the California Code of
26 Regulations and the California Labor Code including Sections 201, 202, 203, 204, 206.5, 226, 226.3,
27 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1198, for which this Court should issue declaratory and
28 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.

44. 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.

45. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF and the other CLASS MEMBERS wages due 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.

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

47. By the conduct alleged herein, DEFENDANTS' practices were also unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide mandatory meal and/or rest breaks to PLAINTIFF and the CLASS MEMBERS.

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

49. PLAINTIFF further demands on behalf of himself and on behalf of each CLASS MEMBER, one (1) hour of pay at the regular rate of compensation for each workday in which a rest period was not timely provided as required by law.

50. By and through the unlawful and unfair business practices described herein,

1 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the other
2 CLASS MEMBERS, including earned wages and unreimbursed business related expenses, and has
3 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of
4 these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
5 compete against competitors who comply with the law.

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

11 52. PLAINTIFF and the other CLASS MEMBERS are entitled to, and do, seek such relief
12 as may be necessary to restore to them the money and property which DEFENDANTS have acquired,
13 or of which PLAINTIFF and the other CLASS MEMBERS have been deprived, by means of the
14 above described unlawful and unfair business practices, including earned but unpaid wages.

15 53. PLAINTIFF and the other CLASS MEMBERS are further entitled to, and do, seek a
16 declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive
17 relief should be issued restraining DEFENDANTS from engaging in any unlawful and unfair business
18 practices in the future.

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

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PAY OVERTIME COMPENSATION**

27 **(Cal. Lab. Code §§ 204, 510, 1194, 1198 and IWC Wage Order No. 4-2001, §3)**

28 **(By PLAINTIFFS and the CLASS MEMBERS against DEFENDANTS)**

55. PLAINTIFF incorporate herein by specific reference, as though fully set forth, the allegations in the preceding paragraphs.

56. Pursuant to California Labor Code §§ 510, 1194, and Wage Order No. 4-2001, § 3, DEFENDANTS are required to compensate PLAINTIFF and the CLASS MEMBERS for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

57. PLAINTIFF and CLASS MEMBERS are current and former non-exempt employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 4-2001. From time-to-time during the LABOR CODE CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFF and the CLASS MEMBERS for all overtime hours worked as required under the forgoing provisions of the California Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194, and IWC Wage Order No. 4-2001, § 3; requiring, permitting or suffering PLAINTIFF and CLASS MEMBERS to work off the clock; requiring, permitting or suffering PLAINTIFF and the CLASS MEMBERS to work through meal and rest breaks; illegally and inaccurately recording time in which PLAINTIFF and the CLASS MEMBERS worked; failing to properly maintain PLAINTIFF'S and CLASS MEMBERS' records; failing to provide accurate itemized wage statements to PLAINTIFF for each pay period; and other methods to be discovered. From time-to-time during the LABOR CODE CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFF and the CLASS MEMBERS for all overtime hours worked and to pay the amount of overtime wages due as required by the California Labor Code and IWC Wage Order by failing and refusing to include all compensation, including commissions and bonuses earned, due and owing and/or paid, in the regular rate of pay from which overtime wages were calculated and paid. During the LABOR CODE CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFF and the CLASS MEMBERS for all overtime hours worked and to pay the amount of overtime wages due as

required by the California Labor Code and IWC Wage Order by incorrectly calculating the regular rate of pay from which overtime wages were calculated and paid.

58. In violations of California Law, DEFENDANTS have knowingly and willfully refused to perform their obligations to compensate PLAINTIFF and the CLASS MEMBERS for all wages earned and all hours worked. As a proximate result, PLAINTIFF and the CLASS MEMBERS have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses and attorney's fees in seeking to compel DEFENDANTS to fully perform their obligations under state law, all to their respective damages in amounts according to proof at time of trial, and within the jurisdiction of this Court.

59. DEFENDANTS' conduct described herein violates California Labor Code §§ 510, 1194, 1198 and IWC Wage Order No. 5-2001, § 3. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code and IWC Wage Orders, PLAINTIFF and the CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorney's fees, expenses, and costs of suit.

THIRD CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Cal. Lab. Code §§ 1194, 1197, 1197.1 and IWC Wage Order No. 4-2001, § 4)

(By PLAINTIFFS and the CLASS MEMBERS against DEFENDANTS)

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

61. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 4-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

62. From time-to-time during the LABOR CODE CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and the CLASS MEMBERS minimum wages for all hours worked by, among other things: requiring, permitting, or suffering PLAINTIFF and the CLASS MEMBERS to work off the clock; requiring, permitting or suffering PLAINTIFF and the CLASS MEMBERS to work through

meal and rest breaks; illegally and inaccurately recording time in which PLAINTIFF and the CLASS MEMBERS worked; failing to properly maintain PLAINTIFF'S and CLASS MEMBERS' records; failing to provide accurate itemized wage statements to PLAINTIFF for each pay period; and other methods to be discovered.

63. DEFENDANTS' conduct described herein violates California Labor Code §§ 1194, 1197, and IWC Wage Order No. 4-2001, § 4. As a proximate result of the aforementioned violations, PLAINTIFF and the CLASS MEMBERS have been damaged in an amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code and IWC Wage Orders, PLAINTIFF and the CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorney's fees, expenses, and costs of suit.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS

(Cal. Lab. Code §§ 226.7, 512 and IWC Wage Order No. 4-2001, §11)

(By PLAINTIFF and the CLASS MEMBERS Against DEFENDANTS)

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

65. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS failed to provide legally compliant meal periods to PLAINTIFF and CLASS MEMBERS as required under California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 4-2001, § 11.

66. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage Order No. 4-2001, § 11 by failing to pay PLAINTIFFS and CLASS MEMBERS who were not provided with a legally compliant meal period, in accordance with the applicable wage order, one additional hour of compensation at each employee's regular rate of pay for each workday that a rest period was not provided.

67. From time to time during the LABOR CODE CLASS PERIOD, DEFENDANTS failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CLASS

MEMBERS as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and the 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 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 CLASS MEMBERS legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records. As a result, PLAINTIFF and other members of the CLASS MEMBERS forfeited meal breaks without additional compensation during the LABOR CODE CLASS PERIOD and in accordance with DEFENDANTS' strict corporate policy and practice.

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

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

FIFTH CAUSE OF ACTION

Failure to Provide Required Rest Periods

[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 4-2001, § 12]

(By PLAINTIFF and CLASS MEMBERS Against DEFENDANTS)

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

71. From time to time during the LABOR CODE CLASS PERIOD, PLAINTIFF and other CLASS MEMBERS were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at

1 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
2 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
3 PLAINTIFF and other CLASS MEMBERS were also not provided with one-hour wages in lieu thereof.
4 As a result of their rigorous work schedules, PLAINTIFF and the other CLASS MEMBERS were
5 periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

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

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

14 **SIXTH CAUSE OF ACTION**

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

16 **[Cal. Labor Code § 2802]**

17 **(By PLAINTIFF and CLASS MEMBERS Against DEFENDANTS)**

18 74. PLAINTIFF and the other CLASS MEMBERS reallege and incorporate by this
19 reference, as though fully set forth, the allegations in the preceding paragraphs.

20 75. California Labor Code § 2802(a) requires an employer to indemnify an employee for all
21 necessary expenditures or losses incurred by the employee in direct consequences of the discharge of
22 his or her duties, or of his or her obedience to the directions of the employer.

23 76. During the LABOR CODE CLASS PERIOD, DEFENDANTS knowingly and willfully
24 failed to indemnify PLAINTIFF and CLASS MEMBERS for all business expenses and/or losses
25 incurred in direct consequence of the discharge of their duties while working under the direction of
26 DEFENDANTS, including but not limited to expenses for cell phone usage, and other employment-
27 related expenses, in violation of California Labor Code § 2802.

28 77. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF

1 and the CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek
2 reimbursement of all necessary expenditures, plus interest thereon, pursuant to California Labor Code
3 § 2802(b). Additionally, PLAINTIFF and the CLASS MEMBERS are entitled to all available statutory
4 penalties and an award of costs, expenses, and reasonable attorney's fees, including those provided in
5 California Labor Code § 2802(c), as well as other available remedies.

6 **SEVENTH CAUSE OF ACTION**

7 **Failure to Furnish Accurate Itemized Wage Statements**

8 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 4-2001, § 7]**

9 **(By PLAINTIFF and the CLASS MEMBERS Against DEFENDANTS)**

10 78. PLAINTIFF and the other CLASS MEMBERS incorporate herein by specific reference,
11 as though fully set forth, the allegations in the preceding paragraphs.

12 79. During the LABOR CODE CLASS PERIOD from time-to-time, DEFENDANTS
13 routinely failed to provide PLAINTIFF and the CLASS MEMBERS with timely, accurate and
14 itemized wage statements in writing showing each employee's gross wages and earned, total hours
15 worked, all deductions made, net wages earned, the name and address of the legal entity or entities
16 employing PLAINTIFFS and CLASS MEMBERS, and all applicable hourly rates in effect during
17 each pay period and the corresponding number of hours worked at each hourly rate, in violation of
18 California Labor Code § 226 and IWC Wage Order No. 4-2001, § 7.

19 80. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed to
20 provide PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized wage statements in
21 accordance with California Labor Code § 226(a).

22 81. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF
23 and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek all
24 wages earned and due, plus interest thereon. Additionally, PLAINTIFF and the other CLASS
25 MEMBERS are entitled to all available statutory penalties, including, but not limited to civil penalties
26 pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and
27 reasonable attorney's fees, including but not limited to those provided in California Labor Code §
28 226(e), as well as other available remedies.

EIGHTH CAUSE OF ACTION

Failure to Pay All Wages Due to Discharged and Quitting Employees

[Cal. Labor Code §§ 201, 202, 203]

(By PLAINTIFF and the CLASS MEMBERS Against DEFENDANTS)

82. PLAINTIFF and the other CLASS MEMBERS incorporate herein by specific reference, as though fully set forth, the allegations in the preceding paragraphs.

83. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

84. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 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.

85. California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wage of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to 30 workdays.

86. During the LABOR CODE CLASS PERIOD, as alleged herein, DEFENDANTS have willfully failed to pay accrued wages and other compensation, including but not limited to, minimum, regular and overtime wages for all hours worked, to CLASS MEMBERS in accordance with California Labor Code §§ 201 and 202. As a result, PLAINTIFF and the CLASS MEMBERS are entitled to all available statutory penalties, including the waiting time penalties provided in California Labor Code § 203, together with interest thereon, as well as other available remedies.

87. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF and the other CLASS MEMBERS have been deprived of compensation in an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code

1 §§ 1194 and 2699.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, PLAINTIFFS, individually and on behalf of all other persons similarly
4 situated, respectfully pray for relief against DEFENDANTS and DOES 1 through 50, inclusive, and
5 each of them, as follows:

- 6 1. For compensatory damages in an amount to be ascertained at trial;
- 7 2. For restitution of all monies due to PLAINTIFFS and CLASS MEMBERS, as well as
8 disgorged profits from DEFENDANTS' unfair and unlawful business practices;
- 9 3. For meal and rest period compensation pursuant to California Labor Code § 226.7 and
10 IWC Wage Order No. 4-2001;
- 11 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 12 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
13 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from
14 engaging in the unlawful business practices complained herein;
- 15 6. For waiting time penalties pursuant to California Labor Code § 203;
- 16 7. For statutory and civil penalties according to proof, including but not limited to all
17 penalties authorized by the California Labor Code §§ 226(e) and §§ 2698-2699.5;
- 18 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code
19 §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision
20 providing for pre-judgment interest;
- 21 9. For reasonable attorney's fees and costs pursuant to California Labor Code §§ 1194,
22 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions providing for
23 attorneys' fees and costs;
- 24 10. For declaratory relief;
- 25 11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,
26 Seventh, and Eighth Causes of Action as a class action;
- 27 12. For an order appointing PLAINTIFF as class representative, and PLAINTIFF'S counsel
28 as class counsel; and

13. For such further relief that the Court may deem just and proper.

Dated: _____, 2020

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

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

DEMAND FOR JURY TRIAL

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

Dated: _____, 2020

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

By: Jean-Claude Lapuyade
Jean-Claude Lapuyade
Attorneys for PLAINTIFFS