

JCL LAW FIRM, APC

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Attorneys for Plaintiff GEORGE WEST

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

GEORGE WEST, on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

SILVERCAR, INC., a corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No: 20TRCV00869

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

Date: April 20, 2022

Time: 8:30 a.m.

Reservation ID: 377295476955

Dept.: M

Judge: Hon. Deirdre Hill

I, JEAN-CLAUDE LAPUYADE, declare as follows:

1. I am the managing partner of the law firm of JCL Law Firm, APC, co-lead counsel of record for Plaintiff George West ("Plaintiff") in this matter. As such, I am fully familiar with the facts, pleadings and history of the matter. The following facts are within my own personal knowledge, and if called as a witness, I could testify competently to the matters stated herein.

2. This declaration is being submitted in support of the motion by Plaintiff for an order: approving the settlement in this Private Attorneys General Act ("PAGA") action with Defendant Silvercar, Inc. ("Defendant").

3. A true and correct copy of the fully executed Stipulation of Settlement of PAGA Claims and Release of Claims ("Agreement") is attached as Exhibit #1.

1 4. A true and accurate copy of Plaintiff's July 31, 2020, PAGA Notice is attached
2 hereto as Exhibit #2.

3 5. A true and correct copy of the March 28, 2022 proof of filing of the Motion for
4 PAGA Settlement Approval and Settlement Agreement, is attached hereto as Exhibit #3.

5 **I. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND**

6 6. An objective evaluation of the proposed settlement confirms that the relief
7 negotiated on behalf of the Aggrieved Employees and the LWDA is fair, reasonable, and valuable.
8 The Settlement is a product of informed, adversarial, and non-collusive and mediated negotiations
9 between experienced counsel. As discussed below, the proposed Settlement satisfies all criteria for
10 PAGA settlement approval. Accordingly, Plaintiff and Plaintiff's Counsel respectfully request this
11 Court grant approval of the Agreement.

12 7. Plaintiff was employed by Defendant as a non-exempt employee in California during
13 the PAGA Period.

14 8. On July 31, 2020, Plaintiff served Defendant and the LWDA with a Notice of
15 Violations ("PAGA Notice") and draft complaint memorializing claims against Defendant for
16 alleged violations of the California Labor Code, including causes of action for: failure to pay
17 minimum wages in violation of Labor Code sections 1194, 1197, and 1197.1; failure to pay overtime
18 wages in violation of Labor Code sections 510, 1194, and 1198; failure to provide required meal
19 periods in violation of Labor Code sections 226.7 and 512; failure to provide required rest periods
20 in violation of Labor Code sections 226.7 and 512; failure to reimburse employees for required
21 expenses in violation of Labor Code section 2802; failure to provide accurate itemized wage
22 statements in violation of Labor Code section 226; and failure to provide wages when due in
23 violation of Labor Code sections 201, 202, and 203 (LWDA Case No. 800898-20).

24 9. On November 23, 2020, Plaintiff filed a complaint against Defendant in the Superior
25 Court of Los Angeles County, Case No. 20TRCV00869, alleging a single cause of action for
26 violations of PAGA based on the above Labor Code violations. Thus, the sole claim before this
27 Court is a putative representative claim under PAGA on behalf of Plaintiff, the Aggrieved
28 Employees, and the State of California for civil penalties pursuant to the PAGA.

10. Plaintiff and Defendant agreed to mediate the action with Gig Kyriacou, Esq. (“Kyriacou”), an experienced wage and hour PAGA action mediator. Prior to the mediation, in order to evaluate the potential value of the claims, the Parties engaged in significant efforts to obtain the facts regarding the claims asserted, including all of Defendant’s relevant wage and hour policies, the exchange of detailed statistical data regarding assignments performed by Plaintiff and the Aggrieved Employees, the production of thousands of pages of documents including a 95% sample of time records and payroll records, and the exchange of detailed briefing and analysis in connection with the mediation.

11. Thereafter, on October 20, 2021, the Parties participated in a full-day mediation with Kyriacou. After extensive, arms-length negotiations and bargaining, the Parties reached an agreement to settle based on Kyriacou's proposal, which led to the signing of the Settlement Agreement and Memorandum of Understanding memorializing the Settlement. The Settlement was negotiated in light of all known facts and circumstances and the uncertainty associated with litigation – including the risk of Plaintiff not being able to maintain representative claims and establishing manageability, the difficulty of proving Plaintiff's claims in a manageable trial, the merits of Defendant's potential defenses, and the significant delay and potential appellate issues inherent to litigation.

12. The parties have agreed to settle this PAGA claim in its entirety after significant formal and informal discovery, and an arm's length mediation. The Settlement is intended to fully and finally resolve the PAGA Released Claims asserted by Plaintiff on behalf of the Aggrieved Employees and State of California. This is only a Settlement of the PAGA claims for civil penalties and is not a class settlement and does not release the individual claims, if any, of the Aggrieved Employees. This Settlement does not release any claim that is not a PAGA claim.² Nor does this Settlement waive Defendant's right to assert *res judicata* or other available defense to any asserted claim or lawsuit.

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² As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: “Nonparty employees are bound by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties.”

II. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT

13. If this case were to proceed to trial, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each period the employee worked in relation to alleged meal or rest period violations, failure to pay minimum or overtime wages, failure to provide accurate itemized wage statements, failure to pay wages when due, failure to reimburse business expenses, and/or failure to maintain required records. Throughout the litigation, Defendant has maintained that Plaintiff and the Aggrieved Employees were properly compensated, and that it did not violate the Labor Code. Thus, liability was far from certain in this case.

14. In advance of mediation, Plaintiff's Counsel, with the assistance of a forensic economist at the Berger Consulting Group ("BCG"), analyzed Defendant's time and payroll data to develop various damage models to estimate Defendant's liability exposure. To evaluate Defendant's *maximum* liability exposure, Plaintiff's Counsel constructed a model which assumed a 100% violation rate for each of Plaintiff's alleged PAGA claims notwithstanding the fact that the analyzed data did not support a 100% violation rate.

15. Based on that Maximum Exposure Model, Plaintiff's claims and corresponding PAGA penalties can be broken down as follows:

Labor Code Section	Number of employees	Statutory penalty	Number of pay periods / violations	Violation rate	Total Penalties
1198, 558 (unpaid wages)	70 aggrieved employees	\$100	1,500	100% of total pay periods	\$150,000
226.2, 226.7, & 512 (rest break violations)	70 aggrieved employees	\$100	1,500	100% of total pay periods	\$150,000
226.7 (unpaid meal break violations)	70 aggrieved employees	\$100	1,500	100% of total pay periods	\$150,000
2802 (reimbursements)	70 aggrieved employees	\$100	1,500	100% of total pay periods	\$150,000

226 (wage statement violations)	70 aggrieved employees	\$100	1,500	100% of total pay periods	\$150,000
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16. Thus, at the time of mediation, Plaintiff's Counsel estimated Defendant's maximum liability exposure at \$750,000.00.

17. Consequently, the Total Settlement Amount of \$125,000 is 16.7% of Defendant's maximum liability exposure – before any reduction.

18. Therefore, at trial, any PAGA penalties awarded in this case could be significantly less than Plaintiff's calculation, even had Plaintiff prevailed on the PAGA claim. Here, using *Carrington* as a guidepost, multiplying the number of applicable pay periods (1,500) by \$5 results in a potential liability of merely **\$7,500**. Therefore, even assuming Plaintiff would have prevailed on every claim at trial, the result obtained by Plaintiff in the Settlement vastly exceeds the amount Plaintiff might have recovered had the Court relied on *Carrington* in awarding the PAGA penalties.

19. Most importantly and relevant to this case, Defendant argued that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal.4th 1004 (2012), weakened, if not eliminated, Plaintiff's claims, on liability, value, and discretion with respect to the PAGA penalties, as to the meal and rest period claims. A major component of the penalties alleged to have been owed by Defendant are attributed to non-compliant meal and rest breaks. Before and during the mediation, Defendant aggressively argued that Defendant's policies and culture afforded the Aggrieved Employees an opportunity to take timely meal and rest breaks, and that employees like Plaintiff *chose* not to take compliant breaks. Specifically, Defendant's written policies encouraged Aggrieved Employees to take meal periods and rest breaks according to schedules compliant with the California Labor Code. The policy further *required* its employees to sign blanket on-duty meal break agreements. Defendant argued, therefore, that under the *Brinker* decision, it "provided" legally compliant meal and rest breaks, and that it has no liability for any alleged missed breaks whatsoever. Defendant argued that it adopted and strictly enforced lawful policies and afforded Plaintiff and the Aggrieved Employees compliant meal and rest breaks. Because Plaintiff's claims were largely based on the missed meal and rest breaks, and because Defendant's policies were,

indeed, facially compliant, this presented a very real concern for Plaintiff. If successful, this defense could eliminate or substantially reduce any recovery under PAGA. While Plaintiff believes that this defense, and others, could be overcome, Defendant maintains that these defenses have merit and therefore present a serious risk to recovery of penalties.

20. Accordingly, Defendant disputes and denies Plaintiff's allegations and claims asserted in the operative complaint which are resolved by the Settlement Agreement. Defendant asserted additional defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties. Defendant could argue that no penalties prior to the PAGA notification should be awarded because the violations were not intentional, and at least one court has so ruled. These defenses present a risk to the PAGA claim and the potential that some or all of the PAGA penalties sought may not be awarded.

21. Given Defendant's potential defenses to the violations at issue, the risks and costs of continued litigation, Plaintiff and his attorneys believe that the Total Settlement Amount is fair and reasonable. Plaintiff's Counsel have significant experience litigating wage and hour claims including claims for PAGA penalties, and the Total Settlement Amount here is similar to or greater than similar settlements that courts have approved. The Total Settlement Amount, along with the other terms of the proposed settlement, were negotiated by experienced counsel at arm's length with the assistance of an experienced and reputable mediator, Gig Kyriacou, Esq.

22. Assuming the LWDA does not register an objection to this Settlement, the decision of the LWDA to accept the Total Settlement Amount and not oppose the motion should be given considerable weight. This is not a situation where the Court needs to be concerned about the rights of absent employees as in a class settlement, as this PAGA-only settlement does not release the individual claims of absent employees, if any, and the LWDA is a sophisticated government entity that is more than able to look out for its own rights.

III. ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE

23. Plaintiff's Counsel seeks approval of the Plaintiff's Counsel Award in the amount of \$56,666.66, comprised of comprised of \$41,666.66 for attorneys' fees (one-third of the Total Settlement Amount) and up to \$15,000 for reimbursement of actually incurred litigation expenses.

1 PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position is
2 that the payment of attorneys' fees and costs in this Settlement is a matter of contract for a
3 contingent representation. Nevertheless, should this Court review the requested attorneys' fees, it
4 is clear that the requested fees and costs are reasonable

5 24. Attached hereto as Exhibit #4 is a true and correct copy of the Time and Billing
6 Journal for the attorneys and staff at the JCL Law Firm, APC as of March 24, 2022. The time
7 and billing journal includes time for supervising attorney Jean-Claude Lapuyade, Esq., associate
8 attorney Eduardo Garcia, Esq., and case paralegal Tesla Stone. To the best of my knowledge, each
9 entry was made contemporaneously and in the ordinary and usual course of business. The
10 attached Billing Journal shows that the JCL Law Firm, APC billed a total of 85.4 hours for a total
11 of \$38,630.00 successfully litigating this action at rates of \$150 (paralegal), \$400 (associate
12 attorney) and \$550 (supervising attorney).

13 25. The JCL Law Firm's rates are comparable to those judicially approved for other
14 plaintiff's firms, such as Baron & Budd (rates ranging from \$775 for the requested partner to
15 \$390-\$630 for non-partners), Western Comden Casselman & Essensten (rates ranging from \$670-
16 \$750 for partners and \$300-\$500 for associates), and Blood Hurst & Rearden (\$510-\$695 for
17 partners). See *Aarons v. BMW of North America*, No. 11-7667-PSG, 2014 U.S. Dist. LEXIS
18 118442, *40-41 (C.D. Cal. Apr. 29, 2014). Other Southern California courts have approved hourly
19 rates in the requested range. See e.g., *Kearney v. Hyundai Motor Am.*, 2013 U.S. Dist. LEXIS
20 91636, *24 (C.D. Cal. June 28, 2013) (approving hourly rates of \$650 -\$800 for senior attorneys
21 in consumer class action); *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D.
22 Cal. 2010)(approving hourly rates between \$445 and \$675); *Faigman v. AT&T Mobility, LLC*,
23 2011 U.S. Dist. LEXIS 15825, *2 (N.D. Cal. Feb. 15, 2011)(Approving hourly rates of \$650 an
24 hour for partners and \$500 for associates); *Richard v. Ameri-Force Mgmt. Servs., Inc.*, No 37-
25 2008-00096019 (San Diego Superior Court, August 27, 2010)(\$695 to \$750 an hour for partners
26 and \$495 for associates); *Barrera v. Gamestop*, No. CV 09-1399 (C.D. Cal. Nov. 29, 2010)(\$700
27 for partners and \$475 for associates); *Anderson v. Nextel Retail Stores, LLC*, No. CV 07-4480
28 (C.D. Cal. June 20, 2010)(\$655- \$750 for partners and \$300 – 515 for associates); *Luquetta v.*

1 Regents of Cal., CGC-05-443007 (San Francisco Sup. Ct.) (approving 2012 partner rates between
2 \$550 and \$850 per hour); and Holoway v. Best Buy Co., C-05-5056-PJH (MEJ)(N.D.
3 Cal.)(approving 2011 partner rates between \$825 and \$700, and associates hourly rates between
4 \$355 and \$405 an hour).

5 26. Moreover, JCL Law Firm, APC's billing rates have been approved multiple times
6 within the last twelve months by California Superior Court judges. (*See generally Rodriguez v.*
7 *RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS 2023354 (July 30,
8 2021 – Hon. David Cohn approved \$550 billing rate and appointed Jean-Claude Lapuyade, Esq.
9 as Class Counsel in a \$1,450,000 wage and hour class action settlement); *Stevens et al., v. Bank*
10 *of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL
11 (October 16, 2020 – Hon. John Meyer approved \$500 billing rate and appointed JCL Law Firm
12 as Class Counsel), *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-
13 00036147 (October 9, 2020 – Hon. Kenneth Medel approved \$500 billing rate and appointed JCL
14 Law Firm as Class Counsel.); *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior
15 Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones approved \$500 billing
16 rate and appointed JCL Law Firm as class counsel.); *Conner v. Ascendant Marketing, LLC et al.*,
17 San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 – Hon. Joel
18 Wohlfeil approved \$500 billing rate and appointed JCL Law Firm as Class Counsel.).

19 27. Additionally, the attorneys and staff at co-counsel the Blumenthal Nordrehaug,
20 Bhomik & De Blouw, LLP (“BNBD”), worked a of 74.25 hours successfully prosecuting this
21 action for a loadstar of \$44,301.75. A true and accurate copy of the Zakay Law Group time and
22 billing entries is attached to the Declaration of Shani Zakay, Esq. filed concurrently herewith.
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28. Collectively, Plaintiff's Counsel spent a total of 159.8 hours successfully litigating this matter for a total combined loadstar of \$82,931.75 and is summarized by firm below:

<u>FIRM</u>	<u>Hours</u>	<u>Total</u>
JCL Law Firm, APC.	82.4	\$38,630.00
BNBD	74.4	\$44,301.75
Total	159.8	\$82,931.75

29. Attached hereto as Exhibit #5 is a true and correct copy of the JCL Law Firm, APC's "Transaction Summary" detailing the JCL Law Firm, APC's actually incurred litigation expenses for this matter as of March 24, 2022. As shown in detail in the attached transaction summary, the JCL Law Firm, APC, incurred a total of \$9,664.01 in litigation costs prosecuting this action. These costs are exclusive of the costs incurred by co-counsel Blumenthal, Nordrehaug, Bhomik & De Blouw, LLP.

30. All of Plaintiff's Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; telephone; postage; factual and legal research charges; mediation fees; expert costs and travel expenses, which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed.

31. Consequently, Class Counsel incurred a total of \$10,439.78 successfully prosecuting his action. Class Counsel now requests reimbursement for those incurred litigation expenses and costs in the amount up to \$15,000 as provided for in the Settlement Agreement and based upon Plaintiff Counsel's billing records.

IV. JCL LAW FIRM EXPERIENCE

32. The JCL Law Firm, APC has extensive class action experience in multiple fields and has represented tens-of-thousands of persons in class actions. The JCL Law Firm, APC has previously litigated similar wage and hour class actions involving similar meal and rest period violations. The JCL Law Firm, APC has been approved as class counsel in similar wage and hour class actions throughout the State of California, including in the Superior Court for the County of

1 San Bernardino. As such, courts throughout the California have deemed Class Counsel
2 experienced and knowledgeable in this area of law. Class Counsel has participated in every aspect
3 of the settlement discussions and has concluded the settlement is fair, adequate and reasonable
4 and in the best interests of the Class.

5 33. Plaintiff and the Aggrieved Employees are represented by competent and
6 experienced counsel to pursue their claims. I established the JCL Law Firm, APC (“Firm”), in
7 2010. The Firm is a boutique plaintiff firm representing aggrieved employees and consumers
8 throughout California in wage and hour class actions, PAGA Actions and complex multi-party
9 product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade, Esq.
10 (Partner/Owner), Eduardo Garcia (Associate), Tesla Stone (Paralegal), and Leilani Edmunds
11 (Legal Secretary).

12 34. I am qualified to represent the Plaintiff, the State of California and the Aggrieved
13 Employees. I have extensive experience with wage and hour class and representative actions
14 litigation like this matter, and employment matters in general. Additionally, I have extensive
15 complex mass tort litigation experience and complex construction product liability experience. I
16 can, will and have adequately represented the interests of the Plaintiff, the State of California and
17 the Aggrieved Employees throughout this action.

18 35. I have represented consumers and employees in California class actions, and
19 complex multi-party product liability actions exclusively for more than 15 years. I have been in
20 practice as a plaintiffs’ civil litigation attorney since April 2007.

21 36. I have significant class counsel and collective action counsel experience. I served as
22 class and/or collective (PAGA) counsel in, among other cases, the following matters:

- 23 a. *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No.
24 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a \$1.8 million
25 dollar class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock
26 work. The Court appointed JCL Law Firm, APC as Class Counsel and as
27 representative PAGA counsel for the State of California.
28

b. *Munoz v. AMTCR*, San Bernardino Superior Court Case No. CIV-DS2001914 (August 24, 2021) Hon. David Cohn approved a \$1.8 million dollar class and PAGA settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)

c. *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums and appointed Jean-Claude Lapuyade, Esq, as Class Counsel.)

d. *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and appointed Jean-Claude Lapuyade, Esq, as Class Counsel in a wage and hour class action settlement.)

e. *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)

f. *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson approved \$550 billing rate in a representative California Labor Code Private Attorney General Act settlement).

g. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)

h. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved

1 a PAGA Settlement negotiated on behalf of the State of California and the aggrieved
2 employees by the JCL Law Firm, APC.)

3 i. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles
4 Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle
5 appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA
6 settlement for, *inter alia*, missed meal and rest periods.)

7 j. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court,
8 Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a
9 PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law
10 Firm, APC acted as counsel for the plaintiff, the State of California and the
11 Aggrieved Employees.)

12 k. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case
13 No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer
14 appointed JCL Law Firm as Class Counsel and granted final approval of wage and
15 hour class action for, *inter alia*, off-the-clock work.)

16 l. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-
17 00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as
18 Class Counsel and granted final approval of wage and hour class action for off-the-
19 clock work.)

20 m. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court
21 Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL
22 Law Firm as class counsel and granted final approval of wage and hour class action
23 for meal period violations.)

24 n. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case
25 No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted
26 approval of PAGA Settlement for, among other things, off-the-clock work. JCL
27 Law Firm, APC acted as lead counsel.)
28

1 o. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No.
2 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA
3 Settlement for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted
4 as lead counsel.)

5 p. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District
6 of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class
7 certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC,
8 as Class Counsel.)

9 q. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior
10 Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson
11 appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an
12 unlawful housing class action settlement arising out of Civil Code Section 1940.1.)

13 r. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-
14 00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC
15 as class counsel and granted final approval of wage and hour class action for unpaid
16 overtime.)

17 s. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No
18 Case No. 37-2018-00043601 (May 31, 2019 – Hon, Gregory Pollack appointed JCL
19 Law Firm, APC, as Class Counsel and granted preliminary approval for the wage
20 and hour class action settlement involving nearly 900 current and former employees.
21 Final approval scheduled for October 4, 2019)

22 t. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case
23 No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law
24 Firm, APC, as Class Counsel and granted final approval for a wage and hour class
25 action settlement for *inter alia*, missed meal and rest periods and independent
26 contractor misclassification.)

27 u. *Moschetto v. Pillow Global, Inc.* San Diego Superior Court, Case No. 37-
28 2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL

1 LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour
2 wage class action settlement involving misclassified house cleaners.)
3 v. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No.
4 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for
5 an unlawful housing class action arising under Civil Code Section 1940.2)
6 w. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior
7 Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory
8 W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final
9 approval for a wage and hour class action settlement for meal and rest period
10 violations);
11 x. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court
12 Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL
13 Law Firm, APC, as Class Counsel and granted final approval for a wage and hour
14 class action settlement involving claims for on duty meal and rest periods.);
15 y. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior
16 Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)
17 z. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-
18 00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal
19 and rest periods)
20 aa. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-
21 2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee
22 misclassification);
23 bb. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case
24 No. BC617160 (2017 - Certified and settled wage and hour class action.);
25 cc. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court
26 Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);
27
28

1 dd. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-
2 00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful
3 housing practices arising out of Civil Code Section 1940.1);

4 37. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a
5 favorable verdict for the firm's clients.

6 38. Finally, I have published appellate experience in *William Blanchette et al., v. The*
7 *Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

8 39. Consequently, I was named to the prestigious Thomson Reuters, Super Lawyers,
9 Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super
10 Lawyers, Rising Star list recognizes the top 2.5% of eligible attorneys. (see
11 https://www.superlawyers.com/about/selection_process.html.)

12
13 I declare under penalty of perjury under the laws of the State of California that the foregoing
14 is true and correct. Executed this 28th day of March 2022, at San Diego, California.

15
16 By:  _____

17 Jean-Claude Lapuyade, Esq.
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EXHIBIT 1

JEAN-CLAUDE LAPUYADE, Esq. (SBN 248676)
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ATTORNEYS FOR DEFENDANT

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

GEORGE WEST, in his representative
capacity on behalf of the State of California
and fellow Aggrieved Employees,

PLAINTIFFS,

vs.

SILVERCAR, INC; a corporation, and
DOES 1 through 50, Inclusive;

DEFENDANTS.

Case No. 20TRCV00869

[Action Filed 11/23/2020]

**STIPULATION OF SETTLEMENT OF
PAGA CLAIMS AND RELEASE OF
PAGA CLAIMS**

Judge: Hon. Dierdre Hill
Dept.: M

1 This Stipulation of Settlement of PAGA Claims and Release of PAGA Claims is entered into
2 by and between Plaintiff GEORGE WEST (hereinafter "Plaintiff"), in his representative capacity on
3 behalf of the State of California and fellow Aggrieved Employees and Defendant SILVERCAR,
4 INC., (hereinafter "Defendant"):

5 **I. DEFINITIONS**

- 6 A. "Action" shall mean the following *George West v. Silvercar, Inc.*, Los Angeles
7 Superior Court, Case No. 20TRCV00869, filed November 23, 2020.
8
- 9 B. "Aggrieved Employees" shall mean all current and former non-exempt employees
10 employed by Defendant in California during the PAGA Period.
11
- 12 C. "Agreement" or "Settlement Agreement" means this Stipulation of Settlement of
13 PAGA Action and Release of PAGA Claims.
14
- 15 D. "Employee Data" means information regarding the Aggrieved Employees that
16 Defendant will in good faith compile from its records and provide to the Settlement
17 Administrator. It shall be formatted in the manner requested by the Settlement
18 Administrator and shall include sufficient information to effectuate this settlement,
19 including but not limited to: each Aggrieved Employee's full name; last known
20 address; Social Security Number; and the number of Pay Periods worked during the
21 PAGA Period.
22
- 23 E. "Court" means the Superior Court for the State of California, County of Los Angeles
24 presiding over the Action.
25
- 26 F. "Defendant" shall mean Silvercar, Inc.
27
28

1 G. "Effective Date" means the earliest date, following entry by the Court of an order and
2 judgment finally approving this Settlement, upon which one of the following have
3 occurred: (i) if no objection is filed to the settlement and no objector appears at the
4 hearing on final approval, ten (10) calendar days after the Court's entry of the order
5 granting approval of this Settlement, (ii) if an objection is filed to the settlement
6 and/or an objector appears at the approval hearing, then the earlier of the following:
7 (a) the expiration of all potential appeal periods without a filing of a notice of appeal
8 of the final approval order or judgment finally approving this Settlement; (b) final
9 affirmance of the approval order and judgment by an appellate court as a result of any
10 appeal(s), or (c) final dismissal or denial of all such appeals (including any petition
11 for review, rehearing, certiorari, etc.) such that the final approval order and judgment
12 finally approving this Settlement is no longer subject to further judicial review.
13

14
15 H. "LWDA" means the California Labor and Workforce Development Agency.
16

17 I. "Funding Date" shall mean ten (10) calendar days after the Effective Date and is the
18 date Defendant transfers the Total Settlement Amount into the QSF in accord with
19 the terms of this Agreement.
20

21 J. "Net Settlement Amount" or "NSA" means the amount remaining from the Total
22 Settlement Amount deducting the Settlement Administration Cost and the Plaintiff's
23 Counsel Award. The NSA shall be used to satisfy allocated satisfy the PAGA
24 Representative's claims for civil penalties arising under PAGA asserted on behalf of
25 the Aggrieved Employees and the LWDA. Twenty-five percent (25%) of the NSA
26 shall be allocated to the Aggrieved Employees ("Aggrieved Employee Payment") and
27 distributed based on the pro rata number of Pay Periods worked by each Aggrieved
28

1 Employee during the PAGA Period. Seventy-five percent (75%) of the NSA shall be
2 paid to the LWDA ("LWDA Payment").

3
4 K. "Notice of PAGA Settlement" means the notice to be provided to the Aggrieved
5 Employees by the Settlement Administrator in the form set forth as Exhibit A to this
6 Agreement.

7
8 L. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
9 Labor Code § 2698 *et seq.*

10
11 M. "PAGA Payment Ratio" means the respective Pay Periods worked during the PAGA
12 Period for each Aggrieved Employee divided by the total of the Pay Periods for all
13 Aggrieved Employees during the PAGA Period.

14
15 N. "PAGA Period" means the period between July 31, 2019 and October 20, 2021.

16
17 O. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either
18 Plaintiff or Defendant, individually.

19
20 P. "Pay Period" for purposes of calculating the distribution of the Aggrieved Employee
21 Payment, as defined herein, means any biweekly period in which Aggrieved
22 Employees received wages during his/her employment with Defendant during the
23 PAGA Period.

24
25 Q. "Plaintiff" or "PAGA Representative" shall mean GEORGE WEST.

26
27 R. "Plaintiff's Counsel" shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC
28 ("JCL") and Blumenthal, Nordrehaug, Bhowmik, De Blouw LLP ("BNBD").

1 S. "Plaintiff's Counsel Award" means the award of attorneys' fees and reimbursement
2 of litigation expenses that the Court authorizes to be paid to Plaintiff's Counsel for
3 the services they have rendered to Plaintiff, the State of California and the Aggrieved
4 Employees consisting of attorneys' fees not to exceed one-third of the Total
5 Settlement Amount *plus* actually incurred litigation costs up to \$15,000.00 as
6 documented by Plaintiff Counsel's billing records. Plaintiff Counsel's application for
7 the Plaintiff's Counsel Award is subject to Court approval, and a reduction in
8 attorneys' fees, costs, awarded by the Court is not a basis for Plaintiff to void, rescind,
9 or terminate this Agreement.
10

11
12 T. "QSF" means the Qualified Settlement Fund established, designated and maintained
13 by the Settlement Administrator to fund the Total Settlement Amount.
14

15 U. "Released PAGA Claims" mean any and all claims for civil penalties under PAGA,
16 arising during the PAGA Period, based on the facts alleged by Plaintiff in the
17 operative complaint at the time of approval and Plaintiff's notice letter to the LWDA
18 dated July 31, 2020, including, but not limited to, Labor Code sections 201, 202, 203,
19 204, 210, 226(a), 226.3, 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
20 2802 and the applicable IWC Wage Orders, and any resulting claim for attorneys'
21 fees and costs under PAGA, which occurred during the PAGA Period.
22

23 V. "Released Parties" shall mean Defendant and its former, present and future owners,
24 parents, and subsidiaries, and all of their current, former, and future officers, directors,
25 members, managers, employees, shareholders, successors and assigns.
26

27 W. "Settlement" means the disposition of the Action pursuant to this Agreement.
28

1 X. "Settlement Administrator" means ILYM Group Inc., 14771 Plaza Drive, Ste. L,
2 Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement
3 Administrator establishes, designates and maintains, as a QSF under Internal Revenue
4 Code section 468B and Treasury Regulation section 1.468B-1, into which the amount
5 of the Total Settlement Amount is deposited for the purpose of resolving the claims
6 in the Action on behalf of the LWDA and the Aggrieved Employees. The Settlement
7 Administrator shall maintain the funds until distribution in an account(s) segregated
8 from the assets of Defendant and any person related to Defendant. *All accrued*
9 *interest shall be paid and distributed to the Aggrieved Employees as part of their*
10 *respective share of the Aggrieved Employee Payment.*

11
12
13 Y. "Settlement Administration Costs" means the amount be paid for the costs of
14 administration of the Settlement from the Total Settlement Amount not to exceed
15 \$3,600.00.

16
17 Z. "Total Settlement Amount" means One Hundred Twenty-Five Thousand Dollars
18 (\$125,000.00) that Defendant must pay into the QSF in connection with this
19 Settlement, inclusive of the Aggrieved Employee Payment, LWDA Payment,
20 Plaintiff's Counsel Award and the Settlement Administration Costs.

21
22 **II. RECITALS**

23
24 A. On July 31, 2020, Plaintiff filed a Notice of Violations with the Labor and Workforce
25 Development Agency (LWDA) and served the same on Defendant.

26
27 B. On November 23, 2020, Plaintiff filed the Action against Defendant alleging a single
28 cause of action for violations of PAGA for, *inter alia*, the following:

1. Failure to provide complaint meal and rest periods;
2. Failure to pay all minimum, regular and overtime wages;
3. Failure to pay the correct rate of overtime pay;
4. Failure to reimburse for required business expenses;
5. Failure to maintain true and accurate records; and
6. Failure to provide accurate itemized wages statements.

C. On October 20, 2021, the Parties participated in mediation presided over by Gig Kyriacou, Esq., a well-respected wage and hour PAGA action mediator. The mediation concluded with a settlement based on a Mediator's proposal which was memorialized in the form of a Memorandum of Understanding.

D. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Aggrieved Employees have merit or that Defendant bears any liability to Plaintiff or the Aggrieved Employees on those claims or any other claims, or as an admission by Plaintiffs that Defendant's defenses in the Action have merit.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

1 **III. TERMS OF AGREEMENT**

2

3 A. Settlement Consideration and Settlement Payments by Defendant.

4 1. Settlement Consideration. In full and complete settlement of the Action, and

5 in exchange for the releases set forth below, Defendant and the Released

6 Parties will pay the Total Settlement Amount of One Hundred Twenty-Five

7 Thousand Dollars (\$125,000.00). The Parties agree that this is a non-

8 reversionary Settlement and that no portion of the Total Settlement Amount

9 shall revert to Defendant. The Total Settlement Amount is exclusive of and

10 separate from any individual settlement by and between Defendant and

11 Plaintiff intended to resolve Plaintiff's individual claims. Except as provided

12 for in Section III(A)(2) and pursuant to any individual settlement with

13 Plaintiff, Defendant shall not be required to pay more or less than the Total

14 Settlement Amount.

15

16

17 2. Number of Aggrieved Employees and Pay Periods. At the time of mediation,

18 Defendant estimated that there were 70 Aggrieved Employees that

19 collectively worked approximately 1,500 Pay Periods ("Projected Pay

20 Periods") during the PAGA Period. In regard hereto, Defendant will provide

21 a declaration under penalty of perjury confirming the number of Aggrieved

22 Employees and Pay Periods they worked during the PAGA Period at the time

23 Plaintiff files the motion for approval of this Settlement. If, at the time of

24 Defendant's declaration, the actual number of Pay Periods exceeds the

25 Projected Pay Periods by more than 10% (i.e., greater than 1,650), Defendant

26

27

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1 shall have the option to increase the Total Settlement Amount proportionally
2 with each added Pay Period over 1,650 at a rate of \$83.33 per Pay Period.

3
4 3. Settlement Payment. Defendant shall pay, via wire transfer, the Total
5 Settlement Amount to the Settlement Administrator on the Funding Date:

6
7 B. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
8 consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of
9 California release the Released Parties from the PAGA Released Claims for the PAGA
10 Period.

11
12 C. Conditions Precedent: This Settlement will become final and effective only upon (1)
13 the Court entering an order approving the Settlement, and (2) Defendant fully funds
14 the Total Settlement Amount.

15
16 D. Nullification of Settlement Agreement. If this Settlement Agreement is not approved
17 by the Court, fails to become effective, or is reversed, withdrawn, or in any way
18 prevents or prohibits Defendant from obtaining a complete resolution of the Released
19 PAGA Claims, or if Defendant fails to fully fund the Total Settlement Amount:

20
21 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
22 and shall not be admissible in any judicial, administrative or arbitral
23 proceeding for any purpose or with respect to any issue, substantive or
24 procedural; and

25
26 2. None of the Parties to this Settlement will be deemed to have waived any
27 claims, objections, defenses or arguments in the Action.

1 E. Tax Liability. The Parties make no representations as to the tax treatment or legal
2 effect of the payments called for in this Agreement. The Aggrieved Employees are
3 not relying on any statement or representation by the Parties in this regard. Aggrieved
4 Employees understand and agree that they will be responsible for the payment of any
5 taxes and penalties assessed on their respective share of the Aggrieved Employee
6 Payments and will be solely responsible for any penalties or other obligations resulting
7 from their personal tax reporting of the Aggrieved Employees Payments.
8

9
10 F. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
11 the “acknowledging party” and each Party to this Agreement other than the
12 acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision
13 of this Agreement, and no written communication or disclosure between or among the
14 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
15 such communication or disclosure constitute or be construed or be relied upon as, tax
16 advice within the meaning of United States Treasury Department circular 230 (31 CFR
17 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
18 her or its own, independent legal and tax counsel for advice (including tax advice) in
19 connection with this Agreement, (b) has not entered into this Agreement based upon
20 the recommendation of any other Party or any attorney or advisor to any other Party,
21 and (c) is not entitled to rely upon any communication or disclosure by any attorney
22 or adviser to any other party to avoid any tax penalty that may be imposed on the
23 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
24 any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
25 strategies (regardless of whether such limitation is legally binding) upon disclosure by
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1 the acknowledging party of the tax treatment or tax structure of any transaction,
2 including any transaction contemplated by this Agreement.

3
4 G. Settlement Administrator. The Settlement Administrator shall be responsible for:
5 establishing and administering the QSF; calculating, processing and mailing payments
6 to Plaintiff's Counsel, LWDA and Aggrieved Employees; printing and mailing the
7 Notice of PAGA Settlement to the Aggrieved Employees as directed by the Court;
8 receiving and reporting the objections and requests for exclusion; calculating, and
9 distributing tax forms for the Aggrieved Employee Payments; providing declaration(s)
10 as necessary in support of approval of this Settlement; and other tasks as the Parties
11 mutually agree or the Court orders the Settlement Administrator to perform. The
12 Settlement Administrator shall keep the Parties timely apprised of the performance of
13 all Settlement Administrator responsibilities.

14
15
16 H. Employee Data. No later than five (5) calendar days after the Effective Date,
17 Defendant shall provide the Settlement Administrator with the Employee Data. The
18 Settlement Administrator shall maintain the Employee Data as private and
19 confidential except to carry out its duties to administer the Settlement. In no event
20 will this information ever be shared with or provided to Plaintiff or Plaintiff's Counsel
21 unless necessary to ensure Plaintiff's Counsel's ability to fulfill any obligations
22 associated with this Settlement.

23
24 I. Funding and Allocation of the Total Settlement Amount. Defendant is required to pay
25 the Total Settlement Amount on or before the Funding Date.
26
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- 1 1. Calculation of Individual Payments to the Aggrieved Employees. Using the
2 Employee Data, the Settlement Administrator shall add up the total number of
3 Pay Periods for all Aggrieved Employees during the PAGA Period. The
4 respective Pay Periods for each Aggrieved Employee will be divided by the
5 total Pay Periods for all Aggrieved Employees, resulting in the “PAGA
6 Payment Ratio” for each Aggrieved Employee. Each Aggrieved Employee’s
7 PAGA Payment Ratio will then be multiplied by the Aggrieved Employee
8 Payment to calculate each Aggrieved Employee’s estimated share of the
9 Aggrieved Employee Payment.
10
- 11 2. Allocation of Individual Aggrieved Employee Payments. For tax purposes,
12 individual Aggrieved Employee Payments shall be allocated and treated 100%
13 as penalties and interest. The individual Aggrieved Employee Payments shall
14 not be subject to wage withholdings and shall be reported on IRS Form 1099s.
15
- 16 3. No Credit Toward Benefit Plans. The individual Aggrieved Employee
17 Payments made to the Aggrieved Employees under this Settlement
18 Agreement, as well as any other payments made pursuant to this Settlement
19 Agreement, will not be utilized to calculate any additional benefits under any
20 benefit plans to which any Aggrieved Employee may be eligible, including,
21 but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock
22 purchase plans, vacation plans, sick leave plans, PTO plans, and any other
23 benefit plan. Rather, it is the Parties’ intention that this Settlement Agreement
24 will not affect any rights, contributions, or amounts to which any Aggrieved
25 Employee may be entitled under any benefit plans.
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1 Six Dollars and Sixty-Six Cents (\$41,666.66) plus costs and expenses
2 supported by declaration not to exceed Fifteen Thousand Dollars
3 (\$15,000.00), from the Total Settlement Amount will be filed. Any portion of
4 the requested Plaintiff's Counsel Award that is not awarded to Plaintiff's
5 Counsel shall be part of the Net Settlement Amount and shall be distributed
6 to the LWDA and the Aggrieved Employees as provided in this Agreement.
7 The Settlement Administrator shall distribute and pay the Plaintiff's Counsel
8 Award to Plaintiff's Counsel from the Total Settlement Amount no later than
9 five (5) calendar days after the Funding Date. Plaintiff's Counsel shall be
10 solely and legally responsible to pay all applicable taxes on the payment made
11 pursuant to this paragraph. The Settlement Administrator shall issue an IRS
12 Form 1099 — MISC to Plaintiff's Counsel for the payments made pursuant
13 to this paragraph. In the event that the Court reduces or does not approve the
14 requested Plaintiff's Counsel Award, Plaintiff and Plaintiff's Counsel shall
15 not have the right to revoke the Settlement, or to appeal such order, and the
16 Settlement will remain binding.

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19
20 8. Settlement Administration Costs. The Settlement Administrator shall be paid
21 for the costs of administration of the Settlement from the Total Settlement
22 Amount. The estimate of the Settlement Administration Costs is \$3,600.00.
23 The Settlement Administrator shall be paid the Settlement Administration
24 Costs no later than twenty-five (25) calendar days after the Funding Date.

25
26 J. Approval Motion. Plaintiff's Counsel and Plaintiffs shall use best efforts to file with
27 the Court a Motion for Settlement Approval and Entering Judgment Finally
28

1 Approving Settlement, within forty-five (45) days following the execution of this
2 Agreement.

3
4 K. Notice of Settlement to LWDA. In connection with the Motion for Settlement
5 Approval, Plaintiff's Counsel shall submit this Agreement to the LWDA pursuant to
6 California Labor Code section 2699(1)(2). Plaintiff's Counsel shall within ten (10)
7 days after the entry of the judgment or order approving this Settlement, submit the
8 order approving the Settlement to the LWDA pursuant to California Labor Code
9 section 2699(1)(3).

10
11 N. Review of Motion for Settlement Approval. Plaintiff's Counsel will provide an
12 opportunity for Counsel for Defendant to review the Motion for Settlement Approval,
13 including the Order Granting Approval of the Settlement, and Judgment Finally
14 Approving Settlement before filing with the Court. The Parties and their counsel will
15 cooperate with each other and use their best efforts to affect the Court's approval of
16 the Motion for Approval of the Settlement, and entry of Judgment.

17
18 O. Cooperation. The Parties and their counsel will cooperate with each other and use
19 their best efforts to implement the Settlement.

20
21 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
22 except such proceedings necessary to implement and complete the Settlement.

23
24 Q. Amendment or Modification. This Agreement may be amended or modified only by
25 a written instrument signed by counsel for all Parties or their successors-in-interest.
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1 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
2 Agreement among these Parties, and no oral or written representations, warranties or
3 inducements have been made to any Party concerning this Agreement or its Exhibit
4 other than the representations, warranties and covenants contained and memorialized
5 in this Agreement and its Exhibit.
6

7 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
8 represent they are expressly authorized by the Parties whom they represent to negotiate
9 this Agreement and to take all appropriate Action required or permitted to be taken by
10 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
11 documents required to effectuate the terms of this Agreement. The persons signing
12 this Agreement on behalf of Defendant represents and warrants that he/she is
13 authorized to sign this Agreement on behalf of Defendant. Plaintiffs represent and
14 warrant that they are authorized to sign this Agreement and that he/she has not assigned
15 any claim, or part of a claim, covered by this Settlement to a third-party.
16
17

18 T. No Public Comment: The Parties and their counsel agree that they will not issue any
19 press releases, initiate any contact with the press, respond to any press inquiry, or have
20 any communication with the press about the fact, amount or terms of the Settlement
21 Agreement. Plaintiff's Counsel further agrees not to use the Settlement Agreement or
22 any of its terms for any marketing or promotional purposes. Nothing herein will restrict
23 Plaintiff's Counsel from including publicly available information regarding this
24 settlement in future judicial submissions regarding Plaintiff Counsel's qualifications
25 and experience. Further, Plaintiff Counsel will not include, reference or use the
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1 Settlement Agreement for any marketing or promotional purposes, either before or
2 after the Motion for Settlement Approval is filed.

3
4 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
5 to the benefit of, the successors or assigns of the Parties, as previously defined.

6
7 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
8 shall be governed by and interpreted according to the laws of the State of California.

9
10 W. Counterparts. This Agreement may be executed in one or more counterparts. All
11 executed counterparts and each of them shall be deemed to be one and the same
12 instrument provided that counsel for the Parties to this Agreement shall exchange
13 among themselves copies or originals of the signed counterparts.

14
15 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
16 is a fair, adequate and reasonable settlement of this Action and have arrived at this
17 Settlement after extensive, non-collusive arms-length negotiations, taking into account
18 all relevant factors, present and potential.

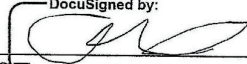
19
20 Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
21 respect to the interpretation, implementation and enforcement of the terms of this
22 Agreement and all orders and judgments entered in connection therewith, and the
23 Parties and their counsel submit to the jurisdiction of the Court for purposes of
24 interpreting, implementing and enforcing the settlement and all orders and judgments
25 entered in connection with this Agreement.
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1 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
2 the Court shall first attempt to construe the provisions valid to the fullest extent
3 possible consistent with applicable precedents so as to define all provisions of this
4 Agreement valid and enforceable.

5
6 AA. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
7 Released PAGA Claims have merit and give rise to liability on the part of Defendant.
8 Defendant claims that the Released PAGA Claims have no merit and do not give rise
9 to liability. This Agreement is a compromise of disputed claims. Nothing contained
10 in this Agreement and no documents referred to and no action taken to carry out this
11 Agreement may be construed or used as an admission by or against the Defendant or
12 Plaintiff or Plaintiff's Counsel as to the merits or lack thereof of the claims asserted.
13 Other than as may be specifically set forth herein, each Party shall be responsible for
14 and shall bear its/his own attorneys' fees and costs.
15
16

17 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

18
19 DATED: 1/18/2022

DocuSigned by:

GEORGE WEST-1F32392778E8486...

20
21
22 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

23 DATED: 1/18/2022


SILVERCAR, INC.
Jon Zeitler
Printed Name
EVP
Title

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IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: 1/18/2022

JCL LAW FIRM, A.P.C.

By: _____

DocuSigned by:
Jean-Claude Langade
0EBC25D5B9CD469...

Attorneys for the Plaintiffs and the Aggrieved
Employees

DATED: February 2, 2022

HAYNES AND BOONE, LLP

By: _____

M. C. Ford

Attorneys for Defendants

EXHIBIT A

[Administrator Notice]

You are receiving this payment because of a lawsuit brought by a former California employee, George West ("Plaintiff") against Silvercar, Inc. ("Company"), for civil penalties pursuant to the Private Attorneys General Act, Labor Code § 2698 et seq. ("PAGA"). Plaintiff claimed that she and other employees were not provided legally compliant meal and rest periods, not paid for all time worked, not properly paid overtime, not provided with accurate wage statements, not timely paid final wages, and not fully paid for expenses.

The Company denies these claims and denies that it owes any penalties, but to avoid further time and expense in litigation, the Company and Plaintiff have agreed to settle the case. The settlement resolves the claims asserted in the lawsuit on behalf of all Company non-exempt employees who worked in California between July 31, 2019 to October 20, 2021. ("PAGA Employees").

According to Company records, you are a PAGA Employee and are therefore entitled to a share of the settlement. This settlement check shall remain valid until [insert date].

This check is issued pursuant to the terms of the PAGA settlement in the case entitled *George West v. Silvercar, Inc., Superior Court State of California, County of Los Angeles, Case No. 20TRCV00869*.

This payment is taxable income for federal, state, and local tax purposes and may be reported to the appropriate taxing authorities. You may be required to make additional tax payments. Please consult a tax advisor to determine your individual tax payment and reporting situation. You will be mailed appropriate tax forms in January 2023. Please notify us of any address changes so that any necessary tax forms can be mailed to your most current address.

If you have any questions about your award, please contact the [insert administrator information].

EXHIBIT 2

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

July 31, 2020

CA2129

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Silvercar, Inc.
Certified Mail #7020064000074884273
Registered Agent Solutions, Inc.
1220 S Street, Suite 150
Sacramento, CA 95811

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Silvercar, Inc. in California and classified as non-exempt employees during the time period of July 31, 2019 until a date as determined by the Court. Our offices represent Plaintiff George West (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Silvercar, Inc. (“Defendant”). Plaintiff was employed by Defendant in California as a Concierge from July of 2019 to March of 2020 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further,

Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant 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. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of 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 Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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6 Attorneys for Plaintiff

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF LOS ANGELES**

9
10 GEORGE WEST, an individual, on behalf
11 of himself and on behalf of all persons
similarly situated,

12
13 Plaintiff,

14 vs.

15 SILVERCAR, INC., a Corporation; and
16 DOES 1 through 50, inclusive,

17
18 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Silvercar, Inc.(“DEFENDANT”) is a Corporation that at all relevant
7 times mentioned herein conducted and continues to conduct substantial business in the state of
8 California.

9 2. DEFENDANT provides car rental services. The Company offers exotic and
10 luxury automobiles for a daily rate.

11 3. PLAINTIFF was employed by DEFENDANT in California from July of 2019 to
12 March of 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
13 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
14 of minimum and overtime wages due for all time worked.

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
16 defined as all individuals who are or previously were employed by DEFENDANT in California
17 and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the
18 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
19 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
20 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
21 (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s uniform policy and practice
25 which failed to lawfully compensate these employees. DEFENDANT’s uniform policy and
26 practice alleged herein was an unlawful, unfair and deceptive business practice whereby
27 DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members
28 of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA

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

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

14 7. The agents, servants and/or employees of the Defendants and each of them acting
15 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
16 agent, servant and/or employee of the Defendants, and personally participated in the conduct
17 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
18 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
19 all Defendants are jointly and severally liable to PLAINTIFF and the other members of the
20 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
21 Defendants' agents, servants and/or employees.

22 23 THE CONDUCT

24 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
25 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
26 meaning the time during which an employee is subject to the control of an employer, including
27 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
28 and CALIFORNIA CLASS Members to work without paying them for all the time they were

1 under DEFENDANT's control. As a result, the PLAINTIFF and other CALIFORNIA CLASS
2 Members forfeited minimum wage and overtime compensation by working without their time
3 being accurately recorded and without compensation at the applicable minimum wage and
4 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
5 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
6 records.

7 9. In addition, State and federal law provides that employees must be paid overtime
8 at one-and-one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA
9 CLASS Members are compensated at an hourly rate plus incentive pay that is tied to specific
10 elements of an employee's performance.

11 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
12 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
13 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
14 performance for DEFENDANT. The non-discretionary incentive program provided all
15 employees paid on an hourly basis with incentive compensation when the employees met the
16 various performance goals set by DEFENDANT. However, when calculating the regular rate
17 of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
18 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
19 rate of pay" for purposes of calculating overtime pay. Management and supervisors described
20 the incentive program to potential and new employees as part of the compensation package. As
21 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
22 CLASS Members must be included in the "regular rate of pay." The failure to do so has
23 resulted in an underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA
24 CLASS Members by DEFENDANT.

25 11. As a result of their rigorous work schedules, PLAINTIFF and other
26 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
27 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
28 other CALIFORNIA CLASS Members were required from time to time to perform work as

1 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
2 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
3 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
4 which these employees were required by DEFENDANT to work ten (10) hours of work from
5 time to time. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited
6 meal breaks without additional compensation and in accordance with DEFENDANT's strict
7 corporate policy and practice. DEFENDANT failed to maintain adequate staffing levels while
8 increasing the production levels for each employee at the busy work sites they provided services
9 for.

10 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
11 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
12 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
13 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
14 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
15 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
16 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
17 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
18 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
19 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
20 proper rest periods by DEFENDANT and DEFENDANT's managers. Additionally, the
21 applicable California Wage Order requires employers to provide employees with off-duty rest
22 periods, which the California Supreme Court defined as time during which an employee is
23 relieved from all work related duties and free from employer control. In so doing, the Court
24 held that the requirement under California law that employers authorize and permit all
25 employees to take rest period means that employers must relieve employees of all duties and
26 relinquish control over how employees spend their time which includes control over the
27 locations where employees may take their rest period. Employers cannot impose controls that
28 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,

1 DEFENDANT's uniform policy restricted PLAINTIFF and other CALIFORNIA CLASS
2 Members from unconstrained walks and was unlawful based on Defendant's rule which stated
3 PLAINTIFF and other CALIFORNIA CLASS Members could not leave the work premises
4 during their rest period.

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

16 14. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
17 Members as a business expense, were required by DEFENDANT to use their own personal
18 cellular phones as a result of and in furtherance of their job duties as employees for
19 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
20 associated with the use of their personal cellular phones and personal vehicles for
21 DEFENDANT's benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members
22 were required by DEFENDANT to use their personal cell phones and to also travel for
23 DEFENDANT for work related issues. As a result, in the course of their employment with
24 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
25 unreimbursed business expenses which included, but were not limited to, costs related to the use
26 of their personal cellular phones and personal vehicles all on behalf of and for the benefit of
27 DEFENDANT.

28 15. From time to time, DEFENDANT also failed to provide PLAINTIFF and the

1 other members of the CALIFORNIA CLASS with complete and accurate wage statements
2 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
3 Code § 226 provides that every employer shall furnish each of his or her employees with an
4 accurate itemized wage statement in writing showing, among other things, gross wages earned
5 and all applicable hourly rates in effect during the pay period and the corresponding amount of
6 time worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing
7 to identify the correct rates of pay and number of hours worked, including for the “Additional
8 Money,” item of pay, which was a wage payment. Aside from the violations listed above in this
9 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists
10 all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from
11 time to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
12 wage statements which violated Cal. Lab. Code § 226.

13 16. In violation of the applicable sections of the California Labor Code and the
14 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
15 a matter of company policy, practice and procedure, intentionally, knowingly and systematically
16 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
17 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended
18 to purposefully avoid the payment for all time worked as required by California law which
19 allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who
20 complied with the law. To the extent equitable tolling operates to toll claims by the
21 CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be
22 adjusted accordingly.

23 17. By reason of this uniform conduct applicable to PLAINTIFF and all
24 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
25 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
26 (the “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
27 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
28 CLASS Members. The proper recording of these employees’ missed meal and rest breaks is

1 the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the
2 obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
3 required compensation for work performed by the members of the CALIFORNIA CLASS and
4 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

5 18. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
6 required off-duty meal and rest breaks to him as required by the applicable Wage Order and
7 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT
8 did not have a policy or practice which provided timely off-duty meal and rest breaks to
9 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks.
10 The nature of the work performed by the PLAINTIFF did not prevent him from being relieved
11 of all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT's
12 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
13 DEFENDANT's business records. To date, DEFENDANT has yet to pay PLAINTIFF all of
14 his wages due to him and DEFENDANT has failed to pay any penalty wages owed to him under
15 California Labor Code Section 203. The amount in controversy for PLAINTIFF individually
16 does not exceed the sum or value of \$75,000.

17 18 **JURISDICTION AND VENUE**

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

23 20. Venue is proper in this Court pursuant to California Code of Civil Procedure,
24 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
25 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
26 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
27 committed the wrongful conduct herein alleged in this County against members of the
28 CALIFORNIA CLASS.

THE CALIFORNIA CLASS

21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

22. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

23. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work.

24. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws. The DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law. This common business practice is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-

1 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
2 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

3 25. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
4 CLASS Members is impracticable.

5 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
6 California law by:

- 7 (a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof.
8 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
9 deceptively having in place company policies, practices and procedures
10 that uniformly and systematically failed to record and pay PLAINTIFF and
11 the other members of the CALIFORNIA CLASS for all time worked,
12 including minimum wages owed and overtime wages owed for work
13 performed by these employees; and,
- 14 (b) Committing an act of unfair competition in violation of the UCL, by
15 failing to provide the PLAINTIFF and the other members of the
16 CALIFORNIA CLASS with the legally required meal and rest periods;
17 and,
- 18 (c) Committing an act of unfair competition in violation of the California
19 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
20 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
21 the CALIFORNIA CLASS members with necessary expenses incurred in
22 the discharge of their job duties.

23 27. This Class Action meets the statutory prerequisites for the maintenance of a Class
24 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 25 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
26 that the joinder of all such persons is impracticable and the disposition of
27 their claims as a class will benefit the parties and the Court;
- 28 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues

1 that are raised in this Complaint are common to the CALIFORNIA
2 CLASS will apply uniformly to every member of the CALIFORNIA
3 CLASS;

4 (c) The claims of the representative PLAINTIFF are typical of the claims of
5 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
6 other members of the CALIFORNIA CLASS, was classified as a non-
7 exempt employee paid on an hourly basis who was subjected to the
8 DEFENDANT's deceptive practice and policy which failed to provide the
9 legally required meal and rest periods to the CALIFORNIA CLASS and
10 thereby systematically underpaid compensation to PLAINTIFF and
11 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
12 result of DEFENDANT's employment practices. PLAINTIFF and the
13 members of the CALIFORNIA CLASS were and are similarly or
14 identically harmed by the same unlawful, deceptive, unfair and pervasive
15 pattern of misconduct engaged in by DEFENDANT; and,

16 (d) The representative PLAINTIFF will fairly and adequately represent and
17 protect the interest of the CALIFORNIA CLASS, and has retained counsel
18 who are competent and experienced in Class Action litigation. There are
19 no material conflicts between the claims of the representative PLAINTIFF
20 and the members of the CALIFORNIA CLASS that would make class
21 certification inappropriate. Counsel for the CALIFORNIA CLASS will
22 vigorously assert the claims of all CALIFORNIA CLASS Members.

23 28. In addition to meeting the statutory prerequisites to a Class Action, this action is
24 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

25 (a) Without class certification and determination of declaratory, injunctive,
26 statutory and other legal questions within the class format, prosecution of
27 separate actions by individual members of the CALIFORNIA CLASS will
28 create the risk of:

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

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;

- 1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action

pursuant to Cal. Code of Civ. Proc. § 382.

29. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the

CALIFORNIA CLASS for the injuries sustained;

- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- (h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

30. DEFENDANT maintains records from which the Court can ascertain and identify by job title each of DEFENDANT's employees who as have been systematically, intentionally and uniformly subjected to DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of similarly situated employees when they have been identified.

THE CALIFORNIA LABOR SUB-CLASS

31. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by Defendant Wholesome Harvest Baking, LLC and/or Defendant Bimbo Bakehouse LLC in California (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to the filing of the complaint and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

32. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order

1 requirements, and the applicable provisions of California law, intentionally, knowingly, and
2 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate
3 compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA
4 LABOR SUB-CLASS and reporting time wages owed to these employees, even though
5 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
6 permitted or suffered to permit this work. DEFENDANT has uniformly denied these
7 CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled
8 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
9 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
10 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

11 33. DEFENDANT maintains records from which the Court can ascertain and identify
12 by name and job title, each of DEFENDANT's employees who have been systematically,
13 intentionally and uniformly subjected to DEFENDANT's company policy, practices and
14 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include
15 any additional job titles of similarly situated employees when they have been identified.

16 34. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
17 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

18 35. Common questions of law and fact exist as to members of the CALIFORNIA
19 LABOR SUB-CLASS, including, but not limited, to the following:

- 20 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
21 compensation due to members of the CALIFORNIA LABOR SUB-
22 CLASS for missed meal and rest breaks in violation of the California
23 Labor Code and California regulations and the applicable California Wage
24 Order;
- 25 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS with accurate
27 itemized wage statements;
- 28 (c) Whether DEFENDANT has engaged in unfair competition by the

above-listed conduct;

(d) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,

(e) Whether DEFENDANT's conduct was willful.

36. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

(a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

(b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

(c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;

(d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;

(e) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties; and,

(f) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to

1 tender full payment and/or restitution of wages owed or in the manner
2 required by California law to the members of the CALIFORNIA LABOR
3 SUB-CLASS who have terminated their employment.

4 37. This Class Action meets the statutory prerequisites for the maintenance of a Class
5 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 6 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
7 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
8 Members is impracticable and the disposition of their claims as a class will
9 benefit the parties and the Court;
- 10 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
11 that are raised in this Complaint are common to the CALIFORNIA
12 LABOR SUB-CLASS and will apply uniformly to every member of the
13 CALIFORNIA LABOR SUB-CLASS;
- 14 (c) The claims of the representative PLAINTIFF are typical of the claims of
15 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
16 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
17 was a non-exempt employee paid on an hourly basis who was subjected
18 to the DEFENDANT's practice and policy which failed to pay the correct
19 amount of wages due to the CALIFORNIA LABOR SUB-CLASS.
20 PLAINTIFF sustained economic injury as a result of DEFENDANT's
21 employment practices. PLAINTIFF and the members of the
22 CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
23 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
24 misconduct engaged in by DEFENDANT; and,
- 25 (d) The representative PLAINTIFF will fairly and adequately represent and
26 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
27 retained counsel who are competent and experienced in Class Action
28 litigation. There are no material conflicts between the claims of the

1 representative PLAINTIFF and the members of the CALIFORNIA
2 LABOR SUB-CLASS that would make class certification inappropriate.
3 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
4 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

5 38. In addition to meeting the statutory prerequisites to a Class Action, this action is
6 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

7 (a) Without class certification and determination of declaratory, injunctive,
8 statutory and other legal questions within the class format, prosecution of
9 separate actions by individual members of the CALIFORNIA LABOR
10 SUB-CLASS will create the risk of:

- 11 1) Inconsistent or varying adjudications with respect to individual
12 members of the CALIFORNIA LABOR SUB-CLASS which
13 would establish incompatible standards of conduct for the parties
14 opposing the CALIFORNIA LABOR SUB-CLASS; or,
15 2) Adjudication with respect to individual members of the
16 CALIFORNIA LABOR SUB-CLASS which would as a practical
17 matter be dispositive of interests of the other members not party to
18 the adjudication or substantially impair or impede their ability to
19 protect their interests.

20 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
21 or refused to act on grounds generally applicable to the CALIFORNIA
22 LABOR SUB-CLASS, making appropriate class-wide relief with respect
23 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
24 DEFENDANT uniformly fails to pay all wages due. Including the correct
25 wages for all time worked by the members of the CALIFORNIA LABOR
26 SUB-CLASS as required by law;

27 (c) Common questions of law and fact predominate as to the members of the
28 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and

1 violations of California Law as listed above, and predominate over any
2 question affecting only individual CALIFORNIA LABOR SUB-CLASS
3 Members, and a Class Action is superior to other available methods for the
4 fair and efficient adjudication of the controversy, including consideration
5 of:

- 6 1) The interests of the members of the CALIFORNIA LABOR SUB-
7 CLASS in individually controlling the prosecution or defense of
8 separate actions in that the substantial expense of individual actions
9 will be avoided to recover the relatively small amount of economic
10 losses sustained by the individual CALIFORNIA LABOR SUB-
11 CLASS Members when compared to the substantial expense and
12 burden of individual prosecution of this litigation;
- 13 2) Class certification will obviate the need for unduly duplicative
14 litigation that would create the risk of:
 - 15 A. Inconsistent or varying adjudications with respect to
16 individual members of the CALIFORNIA LABOR SUB-
17 CLASS, which would establish incompatible standards of
18 conduct for the DEFENDANT; and/or,
 - 19 B. Adjudications with respect to individual members of the
20 CALIFORNIA LABOR SUB-CLASS would as a practical
21 matter be dispositive of the interests of the other members
22 not parties to the adjudication or substantially impair or
23 impede their ability to protect their interests;
- 24 3) In the context of wage litigation because a substantial number of
25 individual CALIFORNIA LABOR SUB-CLASS Members will
26 avoid asserting their legal rights out of fear of retaliation by
27 DEFENDANT, which may adversely affect an individual's job
28 with DEFENDANT or with a subsequent employer, the Class

1 Action is the only means to assert their claims through a
2 representative; and,

- 3 4) A class action is superior to other available methods for the fair and
4 efficient adjudication of this litigation because class treatment will
5 obviate the need for unduly and unnecessary duplicative litigation
6 that is likely to result in the absence of certification of this action
7 pursuant to Cal. Code of Civ. Proc. § 382.

8 39. This Court should permit this action to be maintained as a Class Action pursuant
9 to Cal. Code of Civ. Proc. § 382 because:

- 10 (a) The questions of law and fact common to the CALIFORNIA LABOR
11 SUB-CLASS predominate over any question affecting only individual
12 CALIFORNIA LABOR SUB-CLASS Members;
- 13 (b) A Class Action is superior to any other available method for the fair and
14 efficient adjudication of the claims of the members of the CALIFORNIA
15 LABOR SUB-CLASS because in the context of employment litigation a
16 substantial number of individual CALIFORNIA LABOR SUB-CLASS
17 Members will avoid asserting their rights individually out of fear of
18 retaliation or adverse impact on their employment;
- 19 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
20 numerous that it is impractical to bring all members of the CALIFORNIA
21 LABOR SUB-CLASS before the Court;
- 22 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
23 Members, will not be able to obtain effective and economic legal redress
24 unless the action is maintained as a Class Action;
- 25 (e) There is a community of interest in obtaining appropriate legal and
26 equitable relief for the acts of unfair competition, statutory violations and
27 other improprieties, and in obtaining adequate compensation for the
28 damages and injuries which DEFENDANT's actions have inflicted upon

1 the CALIFORNIA LABOR SUB-CLASS;

- 2 (f) There is a community of interest in ensuring that the combined assets of
3 DEFENDANT are sufficient to adequately compensate the members of the
4 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 5 (g) DEFENDANT has acted or refused to act on grounds generally applicable
6 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
7 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
8 CLASS as a whole;
- 9 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
10 ascertainable from the business records of DEFENDANT. The
11 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
12 CLASS Members who worked for DEFENDANT in California at any
13 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 14 (i) Class treatment provides manageable judicial treatment calculated to bring
15 a efficient and rapid conclusion to all litigation of all wage and hour
16 related claims arising out of the conduct of DEFENDANT as to the
17 members of the CALIFORNIA LABOR SUB-CLASS.

18
19 **FIRST CAUSE OF ACTION**

20 **For Unlawful Business Practices**

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

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

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

26 41. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
27 Code § 17021.

28 42. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines

1 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
2 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
3 competition as follows:

4 Any person who engages, has engaged, or proposes to engage in unfair
5 competition may be enjoined in any court of competent jurisdiction. The court
6 may make such orders or judgments, including the appointment of a receiver, as
7 may be necessary to prevent the use or employment by any person of any practice
which constitutes unfair competition, as defined in this chapter, or as may be
necessary to restore to any person in interest any money or property, real or
personal, which may have been acquired by means of such unfair competition.

8 Cal. Bus. & Prof. Code § 17203.

9 43. By the conduct alleged herein, DEFENDANT has engaged and continues to
10 engage in a business practice which violates California law, including but not limited to, the
11 applicable Industrial Wage Order(s), the California Code of Regulations and the California
12 Labor Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198 & 2802,
13 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
14 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
15 unfair competition, including restitution of wages wrongfully withheld.

16 44. By the conduct alleged herein, DEFENDANT's practices were unlawful and
17 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
18 unscrupulous or substantially injurious to employees, and were without valid justification or
19 utility for which this Court should issue equitable and injunctive relief pursuant to Section
20 17203 of the California Business & Professions Code, including restitution of wages wrongfully
21 withheld.

22 45. By the conduct alleged herein, DEFENDANT's practices were deceptive and
23 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
24 mandated meal and rest periods, the required amount of compensation for missed meal and rest
25 periods, overtime, minimum, and reporting time wages owed, and failed to reimburse all
26 necessary business expenses incurred, due to a systematic business practice that cannot be
27 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
28 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should

1 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
2 restitution of wages wrongfully withheld.

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

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

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

16 49. PLAINTIFF further demands on behalf of himself and each member of the
17 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
18 duty paid rest period was not timely provided as required by law.

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

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

1 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

18
19 **SECOND CAUSE OF ACTION**

20 **For Failure To Pay Minimum Wages**

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

22 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

23 **and Against All Defendants)**

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

27 56. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
28 bring a claim for DEFENDANT's willful and intentional violations of the California Labor

1 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
2 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
3 Members.

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

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

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

11 60. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
12 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
13 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice
14 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
15 other members of the CALIFORNIA LABOR SUB-CLASS.

16 61. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
17 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
18 result of implementing a uniform policy and practice that denies accurate compensation to
19 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
20 minimum wage pay.

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

27 63. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not

1 receive the correct minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

26 68. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
27 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
28 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided

1 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
2 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
3 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
4 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
5 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
6 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein
7 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
8 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

9
10 **THIRD CAUSE OF ACTION**

11 **For Failure To Pay Overtime Compensation**

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

13 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
14 **Defendants)**

15 69. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
16 reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs
17 of this Complaint.

18 70. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
19 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
20 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay
21 these employees for all overtime worked, including, work performed in excess of eight (8) hours
22 in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

5 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
6 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
7 DEFENDANT and were not paid for all the time they worked, including overtime work.

8 75. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
9 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
10 result of implementing a uniform policy and practice that failed to accurately record overtime
11 worked by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied
12 accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR
13 SUB-CLASS for overtime worked, including, the overtime work performed in excess of eight
14 (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
15 workweek.

16 76. In committing these violations of the California Labor Code, DEFENDANT
17 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
18 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted
19 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
20 of the California Labor Code, the Industrial Welfare Commission requirements and other
21 applicable laws and regulations.

22 77. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
23 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
24 receive full compensation for overtime worked.

25 78. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
26 from the overtime requirements of the law. None of these exemptions are applicable to the
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not

1 subject to a valid collective bargaining agreement that would preclude the causes of action
2 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself
3 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
4 negotiable, non-waiveable rights provided by the State of California.

5 79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
6 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
7 worked that they are entitled to, constituting a failure to pay all earned wages..

8 80. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
9 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
10 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
11 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
12 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
13 failed to accurately record and pay as evidenced by DEFENDANT's business records and
14 witnessed by employees.

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

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

28 83. In performing the acts and practices herein alleged in violation of California labor

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

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

19
20 **FOURTH CAUSE OF ACTION**

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

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

23 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
24 **Defendants)**

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

28 86. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time

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

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

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

25
26 **FIFTH CAUSE OF ACTION**

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

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

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

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

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

91. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-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.

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

SIXTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

1 [Cal. Lab. Code § 2802]

2 (By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
3 Defendants)

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

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

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

11 95. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
12 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
13 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
14 benefit. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
15 Members as a business expense, were required by DEFENDANT to use their own personal
16 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
17 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the
18 cost associated with the use of their personal cellular phones and personal vehicles for
19 DEFENDANT's benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members
20 were required by DEFENDANT to use their personal cell phones and personal vehicles for
21 work related issues. As a result, in the course of their employment with DEFENDANT,
22 PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed business
23 expenses which included, but were not limited to, costs related to the use of their personal
24 cellular phones and personal vehicles all on behalf of and for the benefit of DEFENDANT.
25 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required to
26 download and use a phone application named "Insperity" in order to log their hours worked.
27 PLAINTIFF and other CALIFORNIA CLASS Members were required to use their personal cell
28

1 phones in order to download the phone application. Further, PLAINTIFF and other
2 CALIFORNIA CLASS Members were required by DEFENDANT to use their own personal
3 vehicles in order to perform job tasks for DEFENDANT. As a result, in the course of their
4 employment with DEFENDANT, PLAINTIFF and other members of the CALIFORNIA
5 CLASS also incurred unreimbursed business expenses related to the use of their personal
6 vehicles, on behalf of and for the benefit of DEFENDANT. These expenses were necessary to
7 complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to
8 assert any waiver of this expectation. Although these expenses were necessary expenses
9 incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
10 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR
11 SUB-CLASS members for these expenses as an employer is required to do under the laws and
12 regulations of California.

13 96. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
14 by him and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
15 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest
16 at the statutory rate and costs under Cal. Lab. Code § 2802.

17
18 **SEVENTH CAUSE OF ACTION**

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

20 **[Cal. Lab. Code § 226]**

21 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
22 **Defendants)**

23 97. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
24 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
25 of this Complaint.

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

28 (1) gross wages earned,

- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

99. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing to identify the correct rates of pay and number of hours worked, including for the “Additional Money” item of pay, which was a wage payment. Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from

1 time to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
2 wage statements which violated Cal. Lab. Code § 226.

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

14
15 **EIGHTH CAUSE OF ACTION**

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

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

18 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
19 **Defendants)**

20 101. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
21 reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of
22 this Complaint.

23 102. Cal. Lab. Code § 200 provides that:

24 As used in this article:

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

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

1 103. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges
2 an employee, the wages earned and unpaid at the time of discharge are due and payable
3 immediately.”

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

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

14 105. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR SUB-
15 CLASS Members’ employment contract.

16 106. Cal. Lab. Code § 203 provides:

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

22 107. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
23 Members has terminated and DEFENDANT has not tendered payment of wages, to these
24 employees, as required by law.

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and

severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,
- D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;
- D) The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or

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DEMAND FOR A JURY TRIAL

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

Dated: July 27, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

EXHIBIT 3