

James R. Hawkins, Esq. (SBN 192925)
james@jameshawkinsaplc.com
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
TEL: (949) 387-7200
FAX: (949) 387-6676

Christina M. Lucio (SBN 253677)
clucio@farnaeslaw.com
Mitchell J. Murray (SBN 285691)
mitch@farnaeslaw.com
FARNAES & LUCIO, APC
2235 Encinitas Blvd., Suite 210
Encinitas, CA 92024
Telephone: (760) 942-9433

Attorneys for Plaintiff Tim Alderman
on behalf of themselves and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

TIM ALDERMAN, on behalf of himself
individually and all others similarly situated,

Plaintiffs,

vs.

MICHAEL KORS STORES (CALIFORNIA),
INC., a Delaware Corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.
Assigned For All Purposes to:

CLASS ACTION COMPLAINT:

- 1) Failure to Overtime Wages
- 2) Failure to Pay Minimum Wages
- 3) Failure to Authorize and Permit Rest Periods
- 4) Failure to Provide Meal Periods
- 5) Failure to Indemnify Necessary Expenses
- 6) Failure to Timely Pay Wages Due and Payable During Employment
- 7) Failure to Timely Pay Wages Due at Termination
- 8) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions
- 9) Violations of the Unfair Competition Law

JURY TRIAL DEMANDED

1
2 Plaintiff Tim Alderman, on behalf of himself individually and all others similarly
3 situated, (“Plaintiff”) complain of Defendants MICHAEL KORS STORES (CALIFORNIA),
4 INC., a Delaware Corporation; and DOES 1 through 100, inclusive, (collectively “Defendants”)
5 and each of them, and for causes of action alleges:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class Action, pursuant to California Code of Civil Procedure section
9 382, on behalf of Plaintiff and any and all persons who are or were employed by Defendants as
10 non-exempt employees, however titled, working in Defendants’ retail locations in the State of
11 California within the period of April 6, 2016 [four (4) years prior to the filing of the Complaint
12 (as tolled by Emergency Rule 9)] until the resolution of this lawsuit (collectively referred to as
13 the “Class” or “Class Members” or “Non-Exempt Employees”).¹

14 2. During the relevant period, Defendant consistently maintained and enforced against
15 Michael Kors Non-Exempt Employees unlawful practices and policies, among others, in
16 violation of California state wage and hour laws, failing to accurately pay all employees earned
17 wages for hours worked including the required overtime and minimum wage for all hours
18 worked, including non-productive time, failing to provide meal and/or rest periods, and failing
19 to reimburse necessary expenses.

20 3. During the relevant time period, Defendant has maintained a consistent policy of failing
21 to authorize and permit Michael Kors Non-Exempt Employees in the State of California,
22 including Plaintiff, to take legally compliant rest periods of at least (10) minutes per four (4)
23 hours worked or major fraction thereof. Moreover, Michael Kors has failed to pay such
24 employees one (1) hour of pay at the employees regular rate of compensation for each workday
25 that the lawful rest period was not provided as required by California state wage and hour laws.

26 4. During the relevant time period, Defendant has maintained a consistent policy of

27
28 ¹ Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. (Emergency Rule
9(a).)

1 requiring Michael Kors Non-Exempt Employees within the State of California, including
2 Plaintiffs, to work at least five (5) hours without an uninterrupted meal period and to work ten
3 (10) hours without a second uninterrupted meal period, as the case may be, and of failing to pay
4 such employees one (1) hour of pay at the employee's regular rate of compensation for each
5 workday that the meal period is or was not provided, as required by California state wage and
6 hour laws.

7 5. During the relevant period, Defendant has maintained a consistent policy of: (a) failing
8 to pay wages, including the required minimum wages for each hour worked by Michael Kors
9 Non-Exempt Employees within the State of California, including Plaintiff, in violation of
10 California state wage and hour laws; (b) requiring employees to work hours off the clock; (c)
11 failing to accurately calculate and pay overtime premiums; (d) failing to provide accurate
12 itemized records reflecting those hours worked and failing to comply with wage statement
13 provisions; and (e) failing to keep accurate timekeeping records.

14 6. During the relevant time period, Defendant has maintained a consistent policy of
15 unlawfully deducting earned wages from Michael Kors Non-Exempt Employees, including
16 Plaintiff, in violation of California state wage and hour laws.

17 7. During the relevant period, Defendant has maintained a consistent policy of failing to
18 reimburse Michael Kors Non-Exempt Employees, including Plaintiff, for expenses or losses
19 incurred by employees in the discharge of their duties.

20 8. Plaintiff, on behalf of himself and all Class Members, brings this action pursuant to
21 Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 510, 512,
22 558, 1194, 1197, 1198, 2802, applicable IWC Wage Order 7-2001, and California Code of
23 Regulations, Title 8, section 11000 *et. seq.* Plaintiff seeks unpaid wages, including minimum
24 wages for all hours worked during each workday and workweek and applicable overtime wages
25 for all hours worked beyond 8 hour work days and 40 hour work weeks, payment for non-
26 productive time including rest periods, unpaid rest and meal period premiums and
27 compensation, unreimbursed expenses, penalties and reasonable attorneys' fees and costs.

28 9. Plaintiff, on behalf of themselves and all Class Members, pursuant to Business and

1 Professions Code sections 17200-17208, also seeks restitution from Defendants for their failure
2 to pay wages, rest and meal period compensation, and reimburse expenses.

3
4 **JURISDICTION AND VENUE**

5 10. This action is brought as a Class Action on behalf of Plaintiff and similarly
6 situated employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The
7 monetary damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits of
8 the California Superior Court and will be established according to proof at trial.

9 11. This Court has jurisdiction over this action pursuant to the California
10 Constitution Article VI §10, which grants the California Superior Court original jurisdiction in
11 all causes except those given by statute to other courts. The statutes under which this action is
12 brought do not give jurisdiction to any other court.

13 12. This Court has jurisdiction over this Action pursuant to California Code of Civil
14 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

15 13. This Court has jurisdiction over Defendants because, upon information and
16 belief, each Defendant is either a resident of California, has sufficient minimum contacts in
17 California, or otherwise intentionally avails itself of the California market so as to render the
18 exercise of jurisdiction over them by the California Courts consistent with traditional notions of
19 fair play and substantial justice. Defendants have done and are doing business throughout
20 California.

21 14. The unlawful acts alleged herein have a direct effect on Plaintiff and the other
22 similarly situated Non-Exempt Employees within Orange County and it is believed that
23 Defendants have employed hundreds of Non-Exempt Employees throughout the state.

24 15. The California Superior Court also has jurisdiction in this matter because the
25 individual claims of the Class Members described herein are presently believed to be under the
26 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the
27 aggregate potential damages and recovery by all of the claims of the Plaintiff's Class, including
28 attorneys' fees, placed in controversy by Plaintiff's class-wide claims, is presently believed to be

1 under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of
2 2005.

3 16. Venue is proper in this Court because one or more of the Defendants reside,
4 transact business, or have offices in this County, and the acts or omissions alleged herein took
5 place in this County.

6 **II.**
7 **PARTIES**

8 **A. Plaintiff**

9 17. During the relevant time, Plaintiff was a resident of Orange County, California.

10 18. During the relevant time addressed herein, Plaintiff was employed by Defendant as a
11 non-exempt employee in the City of Costa Mesa.

12 19. Plaintiff earned an hourly wage and commissions.

13 20. Plaintiff and the Class Members were not exempt from the provisions of the IWC Wage
14 Orders and the protections of the Labor Code.

15 21. As Michael Kors employees, Plaintiff, and the Class he seeks to represent, was regularly
16 required to:

- 17 (a) work hours “off the clock”;
- 18 (b) work without compensation of the required minimum hourly wage for each hour
19 worked;
- 20 (c) work without compensation of all wages earned;
- 21 (d) work in excess of eight (8) hours in a workday and/or forty (40) hours in a
22 workweek without proper overtime compensation at the rate of time and one-half (1
23 1/2) of the regular rate of pay;
- 24 (e) work overtime without being paid properly calculated overtime premium rates by
25 failing to include all forms of compensation in the hourly rate;
- 26 (f) work without being authorized and permitted a minimum ten-minute paid rest
27 period for every four hours or major fraction thereof worked and without
28 compensation of one (1) hour of pay at the employee’s regular rate of compensation

1 for each workday that a rest period was not provided,
2 (g) work in excess of 5 hours per day without being provided a lawful uninterrupted 30-
3 minute meal period or work in excess of ten hours per day without being provided a
4 second lawful uninterrupted 30-minute meal period, as the case may be, while not
5 being compensated one (1) hour of pay at the regular rate of compensation for each
6 workday that a meal period was interrupted and/or not provided, and
7 (h) incur expenses or losses necessary to employment or discharge of their duties
8 without reimbursement by Defendants, all in violation of California labor laws,
9 regulations, and the applicable Industrial Welfare Commission ("IWC") Wage
10 Orders.

11 22. Defendants willfully failed to pay all earned wages in a timely manner to its employees
12 and members of the Plaintiffs' Class both during employment, and at the time of termination.

13 23. Defendants failed to timely pay to Plaintiffs or members of the Class, upon or after
14 termination of their employment with Defendant, all compensation due, including but not
15 limited to, for minimum regular and overtime wages earned and for having failed to properly
16 provide rest and meal periods.

17 24. Defendants also failed to provide accurate itemized wage statements to Plaintiffs and
18 members of the Class as Defendants routinely failed to comply with wage statement provisions.

19 **B. Defendants**

20 25. Defendant Michael Kors Stores (California), Inc. is a Delaware corporation, with its
21 principal executive office in New York, New York. Michael Kors is an upscale fashion retailer
22 that offers apparel, shoes, watches, handbags, and other accessories in stores operating
23 throughout the United States and through online operations. As relevant to this Complaint,
24 Michael Kors owns and operates approximately forty Michael Kors locations throughout the
25 state of California, including in the cities of Costa Mesa and Brea in the County of Orange.

26 26. Plaintiff is informed and believes that Defendant employs Non-Exempt Employees in
27 each of its locations throughout the state of California. Such employees were not exempt from
28 the provisions of the IWC Wage Orders and the protections of the Labor Code.

27. Whenever in this complaint reference is made to any act, deed, or conduct of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of Defendants' officers, directors, agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Defendants.

28. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

29. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Defendants and of each other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the liability of the Defendants as alleged herein.

30. Plaintiff is further informed and believes, and thereon alleges, that at all times material herein, each Defendant was completely dominated and controlled by its co-Defendants and each was the alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by Defendant or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as Defendants in this complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times acted on behalf of Defendants named in this complaint within the scope of their respective employments.

V.

FACTUAL BACKGROUND

1 31. Defendants operate and, at all times during the relevant period, have operated a retail
2 store in the city of Costa Mesa located in Orange County, and other retail stores elsewhere
3 within California.

4 32. Defendants operate retail stores throughout the state, where they sell upscale
5 merchandise, including apparel, purses, watches, and other accessories to consumers.

6 33. Defendants have employed persons, including Plaintiff, as Non-Exempt Employees
7 throughout the State of California.

8 34. Plaintiff and Michael Kors Non-Exempt Employees were not authorized and permitted
9 to take legally compliant rest periods for work periods of four hours or major fractions thereof;
10 and were not compensated a one-hour wage in lieu thereof in violation of Labor Code §§ 226.7
11 and the applicable Industrial Welfare Commission Wage Orders.

12 35. Plaintiffs and Michael Kors Non-Exempt Employees were not provided timely, legally
13 compliant meal periods during work days in excess of five (5) and or ten (10) hours; and were
14 not compensated a one-hour wage in lieu thereof in violation of Labor Code §§ 226.7 and 512,
15 and the applicable Industrial Welfare Commission Wage Orders.

16 36. Plaintiffs are informed and believe, and based thereon allege, Defendants currently
17 employ and during the relevant period have employed hundreds of employees in the State of
18 California in non-exempt positions as sales employees and/or other similar positions and have
19 paid such employees commissions.

20 37. Plaintiffs and Michael Kors Non-Exempt Employees are, and at all times pertinent
21 hereto, have been non-exempt employees within the meaning of the California Labor Code, and
22 the implementing rules and regulations of the IWC California Wage Orders.

23 38. During the relevant period, Plaintiffs and members of the Plaintiffs' Class were
24 employed by Defendants throughout California as Michael Kors Non-Exempt Employees and
25 were paid based upon a piece rate or commission calculation.

26 39. At all times, Michael Kors Non-Exempt Employees were not exempt from the
27 protections of the Labor Code and applicable IWC Wage Orders.

28 40. As a matter of pattern and practice, Plaintiff and the Class Members were

1 regularly required to work in excess of five (5) and/or ten (10) hours per day, without being
2 provided lawful meal periods as mandated under the California Labor Code and the
3 implementing rules and regulations of the IWC California Wage Orders.

4 41. As a matter of patten and practice, Plaintiff and, upon information and belief, the
5 members of the Plaintiffs' Class of Michael Kors Non-Exempt Employees were not provided
6 lawful meal periods and were not provided with one hour wages in lieu thereof in one or more
7 of the following manners:

- 8 a. employees were required to work through their daily meal period(s), take less
9 than a thirty (30) minute uninterrupted meal period, or work an unlawful "on-
10 duty meal period," and were effectively unable to leave the location premises for
11 meals due to the time constraints and requirements placed upon them by Michael
12 Kors; and
- 13 b. employees were severely restricted in their ability to take meal periods; and
- 14 c. were not provided a second lawful 30 minute meal period on shifts over ten
15 hours.

16 42. Plaintiff and, upon information and belief, the members of the Plaintiff's Class of
17 Michael Kors Non-Exempt Employees did not lawfully waive their first or second meal periods.

18 43. Plaintiff further alleges that Plaintiff and the Class Members were impeded or
19 discouraged from taking lawful meal periods.

20 44. Similarly, as a matter of pattern and practice, during the relevant period, Defendant did
21 not authorize and permit Plaintiff and the Class Members to take a lawful net 10-minute rest
22 break per four hours worked or major fraction thereof during which it relinquished all control
23 over Class Members.

24 45. Plaintiff and, upon information and belief, the Class Members did not waive their rest
25 periods during the relevant period.

26 46. Plaintiff further alleges that Plaintiff and the Class Members were impeded or
27 discouraged from taking lawful rest periods.

28 47. Defendants frequently failed to compensate Michael Kors Non-Exempt Employees for

1 Defendant's failure to authorize and permit rest periods and provide lawful meal periods during
2 the relevant period.

3 48. Throughout the relevant period, Plaintiff and the members of the Plaintiff's Class of
4 Michael Kors Non-Exempt Employees were regularly required to work "off the clock" or
5 without compensation. Defendants did not fully compensate Plaintiff and Michael Kors Non-
6 Exempt Employees for hourly wages during the relevant period.

7 49. Throughout the relevant periods, Defendants had and continue to have a consistent
8 policy of not compensating Plaintiffs and Michael Kors Non-Exempt Employees correctly
9 calculated overtime premiums by failing to include all forms of compensation in overtime
10 calculations.

11 50. Upon information and belief, Defendants failed to ensure that Plaintiff and Michael Kors
12 Non-Exempt Employees were paid at least the required legal minimum wage for each hour
13 worked.

14 51. Additionally, upon information and belief, Defendants failed to include on the wage
15 statements of Plaintiff and Michael Kors Non-Exempt Employees the total accurate number of
16 hours worked, the applicable hourly rates, the number of hours worked at each rate, and
17 commissions earned. Such actions were and continue to be in violation of the California Labor
18 Code and applicable IWC Wage Orders.

19 52. Defendants also failed to fully reimburse Plaintiff and the Class Members for necessary
20 expenses, including Michael Kors clothing, and cellular phone charges/usage.

21 53. On information and belief, Defendants knew or should have known that it is improper to
22 commit the following unlawful acts:

23 (a) requiring employees to work four hours or a major fraction thereof without being
24 provided a legally compliant minimum ten-minute rest period and not compensating the
25 employees with one (1) hour of pay at the employees' regular rate of compensation for each
26 workday that a legally compliant rest period was not authorized and permitted;

27 (b) requiring employees to work in excess of five hours and ten hours per day
28 without being provided a meal period and/or a second meal period and not compensating

employees with one (1) hour of pay at the regular rate of compensation for each workday that a meal period was not provided;

(c) requiring non-exempt employees to work through rest and meal periods without proper legal compensation;

(d) failing to pay non-exempt employees the required minimum wages due and owed for each hour worked;

(e) failing to pay non-exempt employees the wages due and owed for all overtime hours worked in excess of eight hours in a work day and forty hours in a work week;

(f) failing to properly describe the commission rate and calculation used to calculate wages paid to non-exempt employees in a given pay period;

(g) failing to accurately calculate overtime premiums;

(h) failing to pay all wages due and owing upon separation from Defendant's employ;

(i) failing to reimburse necessary expenses;

(j) failing to timely pay wages during employment and at termination; and

(k) failing to provide accurate itemized wage statements.

54. Defendants have made it difficult to determine applicable hourly rates, total hours worked, commission rates and account with precision for the unlawfully withheld wages and deductions due to be paid to Michael Kors non-exempt employees, including Plaintiff, during the relevant period. In addition, Defendants did not implement and preserve a lawful record-keeping method to record all hours worked, non-provided rest and meal periods owed to employees as required for non-exempt employees by 29 U.S.C. section 211(c), California Labor Code section 226, and applicable California Wage Orders. Plaintiff and Class Members are therefore entitled to penalties not to exceed \$4,000 for each employee pursuant to Labor Code section 226(e).

55. Plaintiffs and the Class they seek to represent are covered by applicable California Industrial Welfare Commission Occupational Wage Orders.

1 IV.

2 **CLASS ACTION ALLEGATIONS**

3 56. Plaintiff brings this action on his own behalf, as well as on behalf of each and every
4 other person similarly situated, and thus, seeks class certification under California Code of Civil
5 Procedure §382.

6 57. All claims alleged herein arise under California law for which Plaintiff seeks relief as
7 authorized by California law.

8 58. The **proposed class** is comprised of and defined as: All persons currently or formerly
9 employed by Defendants as non-exempt employees, however titled, working in Defendants’
10 retail locations in the State of California within the period of April 6, 2016 until the resolution
11 of this lawsuit.¹

12 59. Plaintiff also seeks to represent Subclasses included in the Plaintiff’s Class, which are
13 composed of Class Members satisfying the following definitions:

14 a. All Class Members who earned commissions (collectively
15 **“Commissioned Employee Subclass”**);

16 b. All Class Members who were not paid at least minimum wage for all
17 hours worked (collectively **“Minimum Wage Subclass”**);

18 c. All Class Members who were not accurately paid overtime for hours
19 worked over eight in a day or over forty in a workweek (collectively **“Overtime Subclass”**);

20 d. All Class Members who worked more than five (5) hours in a workday
21 and were not provided with a timely, uninterrupted lawful meal period of net thirty (30)
22 minutes, and were not paid compensation of one hour premium wages at the employee’s regular
23 rate in lieu thereof (collectively referred to as the **“First Meal Period Subclass”**);

24 e. All Class Members who worked more than ten (10) hours in a workday
25 and were not provided with a timely, uninterrupted lawful second meal period of net thirty (30)
26 minutes, and were not paid compensation of one hour premium wages at the employee’s regular

27
28 ¹ Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. (Emergency Rule
9(a).)

rate in lieu thereof (collectively referred to as the “**Second Meal Period Subclass**”);

f. All Class Members who worked more than three and a half hours in a workday and were not authorized and permitted to take a lawful net 10-minute rest period and were not paid compensation of one hour premium wages at the employee’s regular rate in lieu thereof (collectively referred to as the “**Rest Period Subclass**”);

g. All Class Members who worked more than six hours in a workday and were not authorized and permitted to take a second lawful net 10-minute rest period and were not paid compensation of one hour premium wages at the employee’s regular rate in lieu thereof (collectively referred to as the “**Second Rest Period Subclass**”);

h. All Class Members who worked more than ten hours in a workday and were not authorized and permitted to take a third lawful net 10-minute rest period and were not paid compensation of one hour premium wages at the employee’s regular rate in lieu thereof (collectively referred to as the “**Second Rest Period Subclass**”);

i. All Class Members who were not timely paid all wages earned during employment (collectively referred to as the “**Labor Code 204 Subclass**”);

j. All Class Members who did not receive all owed wages at the time of separation or within 72 hours in the case of resignation (collectively referred to as the “**Waiting Time Subclass**”);

k. All Class Members who were not provided with accurate and complete itemized wage statements (collectively referred to as the “**Inaccurate Wage Statement Subclass**”);

l. All Class Members who were employed by Defendants and subject to Defendant’s Unfair Business Practices (collectively referred to as the “**Unfair Business Practices Subclass**”).

m. All Class Members who were not reimbursed for all necessary expenditures (collectively referred to as the “**Indemnification Subclass**”).

60. Plaintiff reserves the right, under Rule 3.765, California Rules of Court, to amend or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate,

1 or if it should be deemed necessary by the Court or to further divide the Class Members into
2 additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the
3 Class Members or the Plaintiffs' Class includes the members of each of the Subclasses.

4 61. As set forth in further detail below, this action has been brought and may properly be
5 maintained as a class action under the provisions of section 382 of the Code of Civil Procedure
6 because there is a well-defined community of interest in the litigation, and the proposed Class
7 and Subclasses are easily ascertainable through Defendants' records.

8 **A. Numerosity**

9 62. The potential members of the Class as defined are so numerous that joinder of all the
10 members of the Class is impracticable. While the precise number of Class Members has not
11 been determined at this time, Plaintiff is informed and believes that Defendants currently
12 employ, and during the relevant time periods employed, as many as several thousand employees
13 within the State of California, in positions as Michael Kors Non-Exempt Employees during the
14 relevant period and who are or have been affected by Defendants' unlawful practices as alleged
15 herein.

16 63. Accounting for employee turnover during the relevant periods necessarily increases this
17 number substantially. Plaintiff alleges Defendants' employment records would provide
18 information as to the number and location of all Class Members. Joinder of all members of the
19 proposed Class is not practicable.

20 **B. Commonality**

21 64. There are questions of law and fact common to the Class predominating over any
22 questions affecting only individual Class Members. These common questions of law and fact
23 include, without limitation:

- 24 a. Whether Defendants violated Labor Code section 510, IWC Wage Order 7-2001,
25 and Cal. Code Regs., Title 8, section 11000 *et. seq.* by failing to accurately
26 calculate overtime rates;
27 b. Whether Defendants violated Labor Code sections 226.7, 1198, the applicable
28 IWC Wage Order 7-2001, and Cal. Code Regs., Title 8, section 11000 *et. seq.* by

1 failing to authorize and permit lawful rest periods to Michael Kors Non-Exempt
2 Employees within the State of California for every four hours or major fraction
3 thereof worked;

4 c. Whether Defendants failed to compensate Non-Exempt Employees one hour's
5 wages in lieu of rest periods;

6 d. Whether Defendants violated Labor Code sections 226.7, 512 and IWC Wage
7 Order 7-2001, and Cal. Code Regs., Title 8, section 11000 *et. seq.* by failing to
8 provide a lawful first meal period to Michael Kors Non-Exempt Employees
9 within the State of California on days they worked work periods in excess of five
10 hours;

11 e. Whether Defendants violated Labor Code sections 226.7, 512 and IWC Wage
12 Order 7-2001, and Cal. Code Regs., Title 8, section 11000 *et. seq.* by failing to
13 provide lawful second meal periods to Michael Kors Non-Exempt Employees
14 within the State of California on days they worked work periods in excess of ten
15 hours;

16 f. Whether Defendants failed to compensate Non-Exempt Employees one hour's
17 wages in lieu of meal periods;

18 g. Whether, as a matter of policy and practice, Defendants impeded or discouraged
19 the taking of lawful meal periods.

20 h. Whether Defendants violated sections 226 of the Labor Code and IWC Wage
21 Order 7-2001 by failing to, among other violations, identify the total accurate
22 number of hours worked, the applicable hourly rates, the number of hours
23 worked at each rate, and commissions earned.

24 i. Whether Defendants violated sections of the Labor Code including sections 1194
25 and 1197, and applicable IWC Wage Orders, and Cal. Code Regs., Title 8,
26 section 11000 *et. seq.* by failing to compensate its non-exempt employees,
27 including Plaintiff and the Plaintiff's Class, all wages owed to compensate
28 Plaintiff and members of Plaintiff's Class the required minimum wage rate for

each hour worked.

- j. Whether Defendants violated sections 201-203 of the Labor Code by failing to pay all earned wages due and owing at the time of termination or within 72 hours of said termination.
- k. Whether Defendants violated Labor Code section 204 by failing to timely pay all wages owed during employment.
- l. Whether Defendants violated section 2802 of the Labor Code by failing to reimburse employees for necessary expenditures;
- m. Whether Defendants engaged in unfair competition in violation of section 17200 et seq. of the Business and Professions Code;
- n. Whether Defendants' conduct was willful and/or reckless;
- o. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violations of California law.

C. Typicality

65. Plaintiff is qualified to, and will fairly and adequately protect the interests of each member of the Class and Subclasses with whom he has a well-defined community of interest. Plaintiff's claims herein alleged are typical of those claims which could be alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the relief which would be sought by each member of the Class and/or Subclasses in separate actions. All members of the Class and/or Subclasses have been similarly harmed by Defendants' common course of conduct in violation of California laws, regulations, and statutes as alleged herein. Further, Defendants benefited from the same type of unfair and/or wrongful acts as to each member of the Class and/or Subclasses.

D. Adequacy of Representation

66. Plaintiff is qualified to, and will fairly and adequately protect the interests of each member of the Class and/or Subclasses with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationships, conflicts, or differences with any

1 member of the Class and/or Subclasses, and no such relationships or conflicts are currently
2 known to exist. Plaintiff's attorneys and the proposed counsel for the Class and Subclasses are
3 versed in the rules governing class action discovery, certification, litigation, and settlement and
4 experienced in handling such matters. Other former and current employees of Defendants may
5 also serve as representatives of the Class and Subclasses if needed.

6 **E. Superiority of Class Action**

7 67. A class action is superior to other available means for the fair and efficient adjudication
8 of this controversy. Individual joinder of all Class Members is not practicable, and questions of
9 law and fact common to the Class predominate over any questions affecting only individual
10 members of the Class. Each member of the Class has been damaged and is entitled to recovery
11 by reason of Defendants' unlawful policy and/or practice of failing to compensate Class
12 Members for all wages earned and engaging in the unlawful practices herein complained of, and
13 denying Class Members rest and meal periods without legal compensation.

14 68. Class action treatment will allow those similarly situated persons to litigate their claims
15 in the manner that is most efficient and economical for the parties and the judicial system.
16 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of
17 this action that would preclude its maintenance as a class action.

18 **F. Public Policy Considerations:**

19 69. Employers in the state of California violate employment and labor laws every day.
20 However, current employees are often afraid to assert their rights out of fear of direct or indirect
21 retaliation. Former employees are fearful of bringing actions because they believe their former
22 employers may damage their future endeavors through negative references and/or other means.
23 The nature of this action allows for the protection of current and former employees' rights
24 without fear of retaliation or damage. Additionally, the citizens of California have a significant
25 interest in ensuring employers comply with California's labor laws and in ensuring those
26 employers who do not are prevented from taking further advantage of their employees.

1 V.

2 **CAUSES OF ACTION**

3 **First Cause of Action**

4 ***Failure to Pay Overtime Wages***

5 **(Against All Defendants)**

6 70. Plaintiff incorporates by reference each and every paragraph above, and realleges
7 each and every allegation contained above as though fully set forth herein.

8 71. At all times relevant, pursuant to Labor Code section 510, 1194, and the IWC
9 wage order 7-2001, non-exempt employees working for more than eight (8) hours in a day or
10 forty (40) hours in a work week were entitled to overtime compensation at the rate of one and
11 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day
12 or forty (40) hours in a work week. An employee who works more than twelve (12) hours in a
13 day or in excess of eight (8) hours in a day on the seventh day of work in a particular work week
14 is entitled to overtime compensation at a rate of twice the regular rate of pay.

15 72. California law requires that in determining the regular rate of pay for purposes of
16 calculating the proper overtime premium pay, the employer must consider not only straight
17 hourly wage compensation but must also include payment of all remuneration earned during the
18 applicable time period.

19 73. At times, Plaintiff and the Class Members received additional remuneration,
20 including commissions, non-discretionary bonuses and/or incentive pay during pay periods in
21 which they had worked over eight hours in a day or over forty hours in a week. Defendants
22 failed to account for the additional remuneration when calculating Plaintiffs' and similarly
23 situated employees' overtime rate of pay. This policy, practice, and/or procedure resulted in
24 Defendants paying its hourly non-exempt employees less overtime than they should have
25 received.

26 74. In addition, Defendants frequently required Plaintiff and, upon information and
27 belief, the Class Members to work overtime hours off the clock.

28 75. Upon information and belief, Defendants knew or should have known Plaintiff

1 and the Class Members were undercompensated.

2 76. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
3 wages owed violates the provisions of Labor Code §510, §1194, §1197, §1198, and Wage Order
4 7-2001 and is therefore unlawful.

5 77. Accordingly, Defendants owe Plaintiff and Class Members wages, including
6 overtime wages, and have failed and refused, and continue to fail and refuse, to pay Plaintiffs
7 and Class Members the wages owed.

8 78. Pursuant to Labor Code §1194, Plaintiff and Class Members are entitled to
9 recover their unpaid compensation, as well as interest, costs, and attorneys' fees.

10 79. In addition, pursuant to Labor Code §1194.2(a), Plaintiff and the Class Members
11 are entitled to "recover liquidated damages in an amount equal to the wages unlawfully unpaid
12 and interest thereon."

13 80. Also, pursuant to Labor Code §1197.1, Plaintiff and the Class Members are
14 entitled to claim all applicable civil penalties as a direct result of Defendants' policy and
15 practice of paying a wage less than the minimum fixed by an order of the commission.

16 81. Accordingly, Plaintiff and Class Members are entitled to recover their unpaid
17 wages, including overtime compensation, as well as interest, costs, and attorneys' fees.

18 **Second Cause of Action**

19 ***Failure to Pay Minimum Wages***

20 **(Against All Defendants)**

21 82. Plaintiff incorporates by reference each and every paragraph above, and
22 realleges each and every allegation contained above as though fully set forth herein.

23 83. At all times relevant, Labor Code §1194 provides that any employee receiving
24 less than the legal minimum wage or the legal overtime compensation applicable to the
25 employee is entitled to recover in a civil action the unpaid balance of the full amount of this
26 minimum wage or overtime compensation, including interest thereon, reasonable attorneys'
27 fees, and costs of suit.

28 84. Labor Code §1197 states: "The minimum wage for employees fixed by the

1 commission is the minimum wage to be paid to employees, and the payment of a less wage than
2 the minimum so fixed is unlawful.”

3 85. 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 86. IWC Wage Order 7-2001 similarly requires that employees be paid on the
6 established payday for the period involved, not less than the applicable minimum wage for all
7 hours worked in the payroll period, whether the remuneration is measured by time, piece,
8 commission, or otherwise.

9 87. The IWC Wage Orders define “hours worked” as “the time during which an
10 employee is subject to the control of an employer, and includes all the time the employee is
11 suffered or permitted to work, whether or not required to do so.”

12 88. At all times relevant, Plaintiff and Class Members consistently worked hours for
13 which they were not paid because Plaintiff and the Class Members were required to work off the
14 clock.

15 89. Plaintiff is informed and believes that Defendants and its managers were aware
16 that Plaintiff and the Class Members were working off the clock and that they should have been
17 paid for this time.

18 90. Upon information and belief, Defendants knew or should have known Plaintiffs
19 and the Class Members were undercompensated.

20 91. Defendants’ failure to pay Plaintiff and Class Members the unpaid balance of
21 wages owed violates the provisions of Labor Code §1194, §1197, §1198, and the applicable
22 IWC wage orders, has damaged Plaintiff and the Class Members, and is therefore unlawful.

23 92. Accordingly, Defendants owe Plaintiff and Class Members wages, including
24 minimum wages, and have failed and refused, and continue to fail and refuse, to pay Plaintiffs
25 and Class Members the wages owed.

26 93. Pursuant to Labor Code §1194, Plaintiffs and Class Members are entitled to
27 recover their unpaid compensation, as well as interest, costs, and attorneys’ fees.

28 94. In addition, pursuant to Labor Code §1194.2(a), Plaintiff and the Class Members

are entitled to “recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

95. Also, pursuant to Labor Code §1197.1, Plaintiff and the Class Members are entitled to claim all applicable civil penalties as a direct result of Defendants’ policy and practice of paying a wage less than the minimum fixed by an order of the commission.

96. Accordingly, Plaintiff and Class Members are entitled to recover their unpaid wages, including minimum wages, as well as interest, costs, and attorneys’ fees.

Third Cause of Action

Failure to Authorize and Permit Lawful Rest Periods

or Compensation in Lieu Thereof

(Against All Defendants)

97. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

98. Labor Code section 1198 provides: The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

99. Pursuant to the IWC wage order 7-2001 applicable to Plaintiff’s and Class Members’ employment by Defendants, “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall be counted as hours worked, for which there shall be no deduction from wages.”

100. Labor Code §226.7(a) prohibits an employer from requiring any employee to work during any rest period mandated by an applicable order of the IWC.

101. Defendants were required to authorize and permit employees such as Plaintiff and

1 Class Members to take rest periods during shifts in excess of 3.5 hours, based upon the total
2 hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction
3 thereof, with no deduction from wages.

4 102. Despite said requirements of the IWC wage orders applicable to Plaintiff's and
5 Class Member's employment with Defendants, Defendants failed and refused to authorize and
6 permit Plaintiff and Class Members to take lawful, net ten (10) minute rest periods for every four
7 (4) hours worked, or major fraction thereof.

8 103. In addition, Plaintiff and the Class Members were discouraged or impeded from
9 taking lawful rest periods.

10 104. Defendants did not pay Plaintiff one additional hour of pay at his regular rate of
11 pay for each day that a rest period violation occurred. On information and belief, the other
12 members of the Class endured similar violations as a result of Defendants' rest period policies
13 and practices and Defendant did not pay said Class Members premium pay as required by law.

14 105. By their failure to authorize and permit Plaintiff and the Class Members to take a
15 lawful, net ten (10) minute rest period free from work duties every four (4) hours or major
16 fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour
17 shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other
18 Class Members work(ed) work a third rest period for shifts in excess of ten (10) hours, and by
19 their failure to provide compensation for such unprovided rest periods as alleged herein,
20 Defendants willfully violated the provisions of Labor Code sections 226.7 and the applicable
21 IWC Wage Order(s).

22 106. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
23 represent has been deprived of premium wages in amounts to be determined at trial, and are
24 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
25 costs, under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code
26 3287.

Fourth Cause of Action
Failure to Provide Meal Periods
or Compensation in Lieu Thereof
(Against All Defendants)

107. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

108. Pursuant to Labor Code § 512, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee.

109. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee for a work period of more than ten (10) hours without providing a second meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. A second meal break may only be waived by mutual consent, and if the employee did not waive his or her first meal period, and the employee's work day will not exceed twelve hours.

110. During the relevant time, Defendants failed to provide Plaintiff and Class Members timely and uninterrupted first meal periods of not less than thirty (30) minutes within the first five hours of a shift.

111. During the relevant time, Defendants also failed to provide Plaintiff and Class Members timely and uninterrupted second meal periods of not less than thirty (30) minutes on shifts longer than ten hours.

112. Indeed, during the relevant time, as a consequence of Defendants' staffing and scheduling practices, lack of coverage, work demands, illegal purported waivers and Defendants' policies and practices, Plaintiff and the Class Members were not provided with legally required meal periods.

113. On information and belief, Plaintiff and Class Members did not waive their rights to meal periods under the law.

114. Plaintiff and the Class Members were not provided with valid lawful on-duty meal periods.

115. Plaintiff and the Class Members were not paid one hour of pay at their regular rate for each day that a first or second meal period was not lawfully provided.

116. As a proximate result of the aforementioned violations, Plaintiff and the Class Members have been damaged in an amount according to proof at time of trial.

117. Pursuant to Labor Code § 226.7, Plaintiff and Class Members are entitled to recover one (1) hour of premium pay for each day in which a meal period violation occurred. They are also entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

118. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code section 3287.

Fifth Cause of Action

Failure to Indemnify Necessary Expenditures

(Against All Defendants)

119. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

120. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Class Members for necessary expenditures incurred in direct consequence of the discharge of his or her duties.

121. Plaintiffs, and on information and belief members of the Class, were required to incur expenses in the performance of their assigned job duties, including without limitation for Michael Kors apparel and cellular phone expenses.

122. Upon information and belief, the Defendants did not reimburse Plaintiff or the Plaintiff's class for such expenses.

123. As a result of the unlawful acts of Defendants, Plaintiffs and the Plaintiff's Class Members have been deprived of un-reimbursed sums in amounts to be determined at trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code §2802.

Sixth Cause of Action

Failure To Timely Pay Wages Due And Payable During Employment

(Against All Defendants)

124. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

125. Labor Code section 204 requires that all wages are due and payable twice in each calendar month.

126. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became due and payable to each employee in each month that he or she was not provided with a meal period or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

127. Defendants violated Labor Code § 204 by systematically refusing to pay wages due under the Labor Code.

128. Labor Code section 210 (a) provides that “In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follow:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

103. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of wages in amounts to be determined at trial, and are entitled to

1 recovery of such amounts, penalties, plus interest thereon, attorneys fees, and costs, pursuant to
2 Labor Code § 210, 218.5, 218.6, 510, 1194.

3 **Seventh Cause of Action**

4 ***Failure to Timely Pay Wages Due At Termination***

5 **(Against All Defendants)**

6 129. Plaintiff incorporates each and every allegation set forth in all of the foregoing
7 paragraphs as if fully set forth herein.

8 130. Sections 201 and 202 of the California Labor Code require Defendant to pay its
9 employees all wages due within 72 hours of termination of employment. Section 203 of the
10 Labor Code provides that if an employer willfully fails to timely pay such wages the employer
11 must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in
12 full or an action is commenced. The penalty cannot exceed 30 days of wages.

13 131. Plaintiff and the Class he seeks to represent are entitled to compensation for all
14 forms of wages earned, including, but not limited to, compensation for non-provided rest
15 periods and non-provided meal periods, commissions, minimum wages for each hour worked,
16 properly calculated overtime wages, but to date have not received such compensation therefore,
17 thus requiring Defendants to pay penalties under Labor Code section 203.

18 132. More than 30 days have passed since Plaintiff and certain other affected Class
19 Members have left Defendants' employ, and they have not received payment pursuant to Labor
20 Code section 203.

21 133. As a consequence of Defendant's willful conduct of not paying all earned wages,
22 Plaintiff and certain Class Members are entitled to 30 days' wages as a penalty under Labor
23 Code section 203 for Defendant's failure to pay legal wages.

24 134. Plaintiff and Waiting Time Subclass Members are thus entitled to 30 days' wages
25 as a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and
26 costs.

1 **Eighth Cause of Action**

2 ***Knowing and Intentional Failure to Comply With Itemized Employee***

3 ***Wage Statement Provisions***

4 **(Against All Defendants)**

5 135. Plaintiff incorporates each and every allegation set forth in all of the foregoing
6 paragraphs as if fully set forth herein.

7 136. Labor Code section 226(a) reads in pertinent part: “Every employer shall,
8 semimonthly or at the time of each payment of wages, furnish each of his or her employees,
9 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
10 separately when wages are paid by personal check or cash, an accurate itemized statement in
11 writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all
12 deductions... (5) net wages earned, (6) the inclusive dates of the period for which the employee
13 is paid, (7) the name of the employee and only the last four digits of his or her social security
14 number or an employee identification number other than a social security number, (8) the name
15 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect
16 during each the pay period and the corresponding number of hours worked at each hourly rate
17 by the employee....”.

18 137. Defendants have knowingly and intentionally failed to comply with Labor Code
19 section 226(a) on wage statements that should have been provided to Plaintiff and members of
20 the proposed class. By way of example only, Defendants have failed to include the total hours
21 worked by the employee, all commissions earned, and all applicable hourly rates in effect and
22 the corresponding number of hours worked at each hourly rate. In addition, Defendants have
23 failed to provide accurate itemized wage statements as a consequence of the above-specified
24 violations.

25 138. Labor Code section 1174 of the California also requires Defendants to maintain
26 and preserve, in a centralized location, among other items, records showing the names and
27 addresses of all employees employed and payroll records showing the hours worked daily by,
28 and the wages paid to, its employees. On information and belief and based thereon, Defendants

1 have knowingly and intentionally failed to comply with Labor Code section 1174, including by
2 implementing the policies and procedures and committing the violations alleged in the
3 preceding causes of action and herein. Defendants' failure to comply with Labor Code section
4 1174 is unlawful pursuant to Labor Code section 1175.

5 139. IWC Wage Orders require Defendants to maintain time records showing, among
6 other items, when the employee begins and ends each work period, meal periods, split shift
7 intervals and total daily hours worked in an itemized wage statement. Defendants must show all
8 deductions and reimbursements from payment of wages, and must accurately report total hours
9 worked by Plaintiffs and the members of the proposed class.

10 140. Moreover, upon information and belief, as a pattern and practice, in violation of
11 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
12 accurate records pertaining to the total hours worked for Defendants by the members of the
13 Wage Statement Class, including but not limited to, beginning and ending of each work period,
14 meal period and split shift interval, the total daily hours worked, and the total hours worked per
15 pay period and applicable rates of pay.

16 141. Plaintiffs and the members of the Wage Statement Class have suffered injury as a
17 result of Defendants' failure to maintain accurate records for the members of the Wage
18 Statement Class in that the members of the Wage Statement Class were not timely provided
19 written accurate itemized statements showing all requisite information, and that the members of
20 the Wage Statement Class were misled by Defendants as to the correct information regarding
21 various items, including but not limited to the total hours worked by the employee, gross pay,
22 net wages earned and all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate. The lack of information hindered
24 Plaintiff and the Class from determining the amount of wages owed to them and led them to
25 believe they were not entitled to be paid wages for all hours worked, for overtime, missed meal
26 and rest breaks, or for each hour of labor performed and the proper hourly rate, although they
27 were so entitled.

28 142. Pursuant to Labor Code section 226, and in light of Defendants' violations

1 addressed above, Plaintiff and the Wage Statement Class Members are each entitled to recover
2 up to a maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

3 **Ninth Cause of Action**

4 ***Violation of Unfair Competition Law***

5 Cal. Bus. & Prof. Code §§ 17200, et. seq.

6 (Against All Defendants)

7 143. Plaintiffs incorporate each and every allegation set forth in all of the foregoing
8 paragraphs as if fully set forth herein.

9 144. Defendants have engaged in unlawful activity prohibited by Business and
10 Professions Code section 17200 *et. seq.* for the actions set forth in this Complaint including, but
11 not limited to, the following:

- 12 a. requiring work "off the clock" by not paying employees for their time worked;
13 b. requiring work in excess of eight (8) hours in a workday and/or forty (40) hours
14 in a workweek without paying compensation at the rate of time and one-half (1
15 1/2) of an employee's regular rate of pay or failing to accurately calculate
16 overtime rates;
17 c. requiring employees to work without being provided a minimum ten-minute rest
18 period for every four hours or major fraction thereof worked and not being
19 compensated one (1) hour of pay at an employee's regular rate of compensation
20 for each workday the employee was not provided a rest period;
21 d. requiring employees to work in excess of five hours and/or ten hours per day
22 without being provided a meal period and/or a second meal period and/or
23 requiring employees to remain on Defendants premises during their meal period
24 and not being compensated one (1) hour of pay at the regular rate (or minimum
25 wage) of compensation for each workday that a meal period was not provided, all
26 in violation of California labor laws, regulations, and Industrial Welfare
27 Commission Wage Orders;
28

- 1 e. failing to pay non-exempt employees the required minimum wages due and owed
2 for each hour worked;
3 f. failing to properly pay overtime premiums;
4 g. failing to reimburse employees for expenses incurred;
5 h. failing to properly describe commission calculation used to calculate wages paid
6 to non-exempt employees in a given pay period;
7 i. failing to provide accurate itemized wage statements; and
8 j. failing to timely pay all wages earned during employment and at termination.

9 145. The actions of Defendants, as alleged within this Complaint, constitute false,
10 unlawful, unfair, fraudulent and deceptive business practices within the meaning of Business
11 and Professions Code section 17200, *et. seq.*

12 146. Plaintiff and the Class Members have been personally aggrieved by Defendants'
13 unlawful and unfair business acts and practices alleged herein by the loss of money and/or
14 property.

15 147. As a result of the unlawful acts specified herein, Defendants have reaped and
16 continue to reap unfair benefits and unlawful profits at the expense of the Plaintiff and the Class
17 Members he seeks to represent. Defendants have been unjustly enriched through Defendants'
18 unlawful, unfair, and fraudulent business practices alleged herein.

19 148. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff
20 and the Class Members are entitled to an injunction and other equitable relief against such
21 unlawful practices and are entitled to restitution of the wages withheld and retained by
22 Defendants during a period that commences four (4) years prior to the filing of this complaint;
23 an award of attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest;
24 and an award of costs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray judgment against Defendants, as follows:

Class Certification

- 1. That this action be certified as a class action;
- 2. That Plaintiff be appointed as the representatives of the Class;
- 3. That Plaintiff be appointed as the representative of the Subclasses; and
- 4. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

On the First Cause of Action

(Failure to pay overtime)

- 1. For the unpaid balance of the full amount of any overtime wages owed, as well as interest thereon,
- 2. Penalties according to statute,
- 3. Liquidated damages,
- 4. Reasonable attorneys' fees, and costs of suit;
- 5. For interest and
- 6. For such other and further relief as the Court deems proper.

On the Second Cause of Action

(Failure to pay Minimum Wages)

- 1. For the unpaid balance of the full amount of any unpaid minimum wages, as well as interest thereon,
- 2. Penalties according to statute,
- 3. Liquidated damages,
- 4. Reasonable attorneys' fees, and costs of suit;
- 5. For interest and
- 6. For such other and further relief as the Court deems proper.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

On the Third Cause of Action

(Failure to Authorize and Permit Lawful Rest Periods)

1. For one (1) hour of premium pay for each day in which a required rest period was not lawfully authorized and permitted; and
2. For reasonable attorneys’ fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

On the Fourth Cause of Action

(Failure to Provide Lawful Meal Periods)

1. For one (1) hour of premium pay for each day in which a required meal period was not lawfully provided;
2. For reasonable attorneys’ fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

On the Fifth Cause of Action

(Failure to Reimburse Necessary Expenses)

1. For unreimbursed sums;
2. For reasonable attorneys’ fees and costs pursuant to statute;
3. For interest; and
4. For such other and further relief as the Court deems proper.

On the Sixth Cause of Action

(Failure to Timely Pay Wages Due and Payable During Employment)

1. For unpaid wages;
2. For penalties pursuant to Labor Code § 210 and 25% of the amount of wages unlawfully withheld;
3. For interest;
4. For reasonable attorneys’ fees and costs pursuant to statute; and
5. For such other and further relief as the Court deems proper.

1
2
3 **On the Seventh Cause of Action**

4 **(Failure to Timely Pay Wages At Separation)**

- 5 1. For unpaid wages;
6 2. For penalties pursuant to Labor Code § 203;
7 3. For interest;
8 4. For reasonable attorneys' fees and costs pursuant to statute; and
9 5. For such other and further relief as the Court deems proper.

10 **On the Eighth Cause of Action**

11 **(Failure to Provide Accurate Itemized Wage Statements)**

- 12 1. For statutory penalties, including penalties pursuant to Labor Code section 226;
13 2. For reasonable attorneys' fees and costs; and
14 3. For such other and further relief as the Court deems proper;

15 **On the Ninth Cause of Action**

16 **(Violation of the Unfair Competition Law)**

17 1. For an order enjoining Defendants from continuing to engage in the
18 aforementioned unlawful business practice in violation of California Business & Professions
19 Code §17200; and

20 2. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of
21 sums to Plaintiff and Class Members for the Defendants' past failure to pay minimum wages,
22 overtime and regular wages, for Defendants' past failure to reimburse necessary expenses, and
23 for premium wages for meal and rest periods that were not provided to Plaintiff and Class
24 Members during the relevant time in an amount according to proof;

25 3. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to
26 recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194;

27 4. For pre-judgment interest on any unpaid minimum wages, straight time wages,
28 overtime wages and premium wages due from the day that such amounts were due;

5. For costs of suit incurred herein that Plaintiff and Class Members are entitled to recover under the Labor Code; and

6. For such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of the Class and Subclasses, respectfully demand a jury trial in this matter.

Respectfully submitted,

JAMES HAWKINS APLC

Dated: September 30, 2020

Jan R. H.

James R. Hawkins, Esq.

FARNAES & LUCIO, APC

Dated: September 30, 2020

[Signature]

Christina M. Lucio, Esq.

Attorneys for Plaintiff TIM ALDERMAN, on behalf of
himself and all others similarly situated