

1 **ZAKAY LAW GROUP, APLC**
Shani O. Zakay (State Bar #277924)
2 Jackland K. Hom (State Bar #327243)
5850 Oberlin Drive, Suite 230A
3 San Diego, CA 92121
Telephone: (619)255-9047
4 Facsimile: (858) 404-9203
shani@zakaylaw.com
5 jackland@zakaylaw.com

6 **JCL LAW FIRM, APC**
Jean-Claude Lapuyade (State Bar #248676)
7 3990 Old Town Avenue, Suite C204
San Diego, CA 92110
8 Telephone: (619)599-8292
9 Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

10 Attorneys for Plaintiff

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF ALAMEDA**

13
14 **CARLOS CORTEZ OCEGUERA**, on behalf
of himself, other Aggrieved Employees, and
15 the State of California,

16 Plaintiff,

17 v.

18 **M & M AUTOMOTIVE GROUP, INC.** (dba
Volkswagen of Oakland); and DOES 1-50,
19 Inclusive,

20 Defendants.

Case No: **HG 21086853**

REPRESENTATIVE ACTION
COMPLAINT FOR:

1) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 *et seq.*]

21
22 Plaintiff CARLOS CORTEZ OCEGUERA, an individual, ("PLAINTIFF"), on behalf of
23 the people of the State of California and as "aggrieved employees" acting as a private attorney
24 general under the Labor Code Private Attorney General Action of 2004, § 2699, *et seq.* ("PAGA")
25 only, alleges on information and belief, except for his own acts and knowledge which are based
26 on personal knowledge, the following:

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28 ///

ENDORSED
FILED
ALAMEDA COUNTY
JAN 12 2021

CLERK OF THE SUPERIOR COURT
By Alex R. Kosenko Jr, Deputy

VIA FAX

PRELIMINARY ALLEGATIONS

1
2 1. PLAINTIFF brings this action against M & M AUTOMOTIVE GROUP, INC.
3 (dba Volkswagen of Oakland) (“DEFENDANT” or “DEFENDANTS”) seeking only to recover
4 PAGA civil penalties for himself, and on behalf of all current and former aggrieved employees
5 that worked for DEFENDANT. PLAINTIFF does not seek to recover anything other than
6 penalties as permitted by California Labor Code § 2699. To the extent that statutory violations
7 are mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
8 damages for those violations in this action, but simply the civil penalties permitted by California
9 Labor Code § 2699. Notwithstanding, PLAINTIFF is not abandoning his right to pursue his
10 individual claims for, inter alia, Defendant’s alleged wage violations, and/or general or special
11 damages arising from those violations, and he fully intends to, at a future date, pursue claims for
12 those individual claims and damages.

13 2. California has enacted the PAGA to permit an individual to bring an action on
14 behalf of himself and on behalf of others for PAGA penalties only, which is the precise and sole
15 nature of this action.

16 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
17 DEFENDANTS’ violations under PAGA and solely for the relief as permitted by PAGA – that
18 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
19 complaint should be construed as attempting to obtain any relief that would not be available in a
20 PAGA-only action.

21 4. Defendant M & M AUTOMOTIVE GROUP, INC. (dba Volkswagen of
22 Oakland) is a California Corporation and at all relevant times mentioned herein conducted and
23 continues to conduct substantial and regular business throughout California.

24 5. DEFENDANT owns and operates a car dealership in Oakland, California.

25 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
26 employee entitled to minimum wages, overtime pay and meal and rest periods from January
27 2019 to August 2020. PLAINTIFF was at all times relevant mentioned herein classified by
28 DEFENDANT as a non-exempt employee paid on an hourly basis.

1 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, bring this Representative Action on behalf of the State of California with respect to himself
4 and all individuals who are or previously were employed by DEFENDANT in California (the
5 "AGGRIEVED EMPLOYEES") during the PAGA PERIOD, brings this representative action
6 pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S violation of
7 California Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510,
8 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, and 2804 and the applicable
9 Wage Order. Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are
10 aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

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

20 9. The agents, servants and/or employees of the Defendants and each of them acting
21 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
22 agent, servant and/or employee of the Defendants, and personally participated in the conduct
23 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
24 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
25 Defendants are jointly and severally liable to PLAINTIFF and all AGGRIEVED EMPLOYEES,
26 for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants
27 and/or employees.

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THE CONDUCT

10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time, DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANT'S control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S off-duty meal break. PLAINTIFF was often interrupted by work assignments during her breaks. Indeed there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES, from time to time, forfeited minimum wage and overtime compensation by working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT'S uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT'S business records.

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

12. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their

1 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
2 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
3 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
4 minutes for some shifts worked of ten (10) hours or more. When they did have an opportunity to
5 take their rest breaks, PLAINTIFF and the AGGRIEVED EMPLOYEES were required to
6 remain on the premises and subject to DEFENDANT's control. If they were to leave
7 DEFENDANT's premises, PLAINTIFF and the AGGRIEVED EMPLOYEES were required to
8 clock out. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with
9 one hour wages in lieu thereof. As a result of their rigorous work schedules, and in compliance
10 with DEFENDANT's policy, PLAINTIFF and other AGGRIEVED EMPLOYEES were
11 periodically denied their proper rest periods by DEFENDANT and DEFENDANT'S managers.

12 13. In addition, because of DEFENDANT's implemented a commission pay plan for
13 some of the AGGRIEVED EMPLOYEES, DEFENDANT failed to compensate the Aggrieved
14 Employees for their rest periods as required by the applicable Wage Order and Labor Code at
15 their regular rate of pay. DEFENDANT did not have a policy or practice which paid for off-
16 duty rest periods to PLAINTIFF and the other AGGRIEVED EMPLOYEES at their regular
17 rate. As a result, DEFENDANT's failure to provide PLAINTIFF and the AGGRIEVED
18 EMPLOYEES with all the legally required paid rest periods is evidenced by DEFENDANT's
19 business records.

20 14. From time to time, when PLAINTIFF and other AGGRIEVED EMPLOYEES
21 missed meal and rest breaks, or when they worked during what was supposed to be their meal
22 breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of the 226
23 CLASS with complete and accurate wage statements which failed to show, among other things,
24 the correct time and overtime worked, including, work performed in excess of eight (8) hours in
25 a workday and/or forty (40) hours in any workweek, and the correct penalty payments or missed
26 meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall furnish each of
27 his or her employees with an accurate itemized wage statement in writing showing, among other
28 things, gross wages earned and all applicable hourly rates in effect during the pay period and the

1 corresponding amount of time worked at each hourly rate. Aside from the violations listed
2 above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage
3 statement that lists all the requirements under California Labor Code 226 et seq. As a result,
4 from time to time DEFENDANT provided PLAINTIFF and the other members of the
5 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

6 15. Additionally, from time-to-time DEFENDANT issued PLAINTIFF and
7 AGGRIEVED EMPLOYEES inaccurate wage statements that failed to show, among other
8 things, all applicable hourly rates in effect during the pay period and the corresponding amount
9 of time worked at each hourly rate and correct rates of pay. For instance, for the pay period
10 between February 24, 2020 and March 1, 2020, PLAINTIFF received remuneration from
11 DEFENDANTS described as “OT DT Premium” in the gross amount of \$20.36. DEFENDANT
12 violated California Labor Code Section 226 by failing to list the applicable hourly rate and the
13 corresponding number of hours worked at the applicable hourly rate for this line item of
14 remuneration described as “OT DT Premium”. PLAINTIFF, and AGGRIEVED EMPLOYEES,
15 suffered damage as a result of DEFENDANTS’ aforementioned violation because he could not
16 promptly and easily determine from the wage statement alone the applicable hourly rate and the
17 corresponding number of hours worked at the applicable hourly rate for this line item of
18 remuneration described as “OT DT Premium”.

19 16. By reason of this uniform conduct applicable to PLAINTIFF and all
20 AGGRIEVED EMPLOYEES, DEFENDANT committed acts of unfair competition in violation
21 of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.(the
22 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
23 calculate and record all missed meal and rest periods by PLAINTIFF and other AGGRIEVED
24 EMPLOYEES. The proper recording of these employees’ missed meal and rest breaks is the
25 DEFENDANT’S burden. As a result of DEFENDANT’S intentional disregard of the obligation
26 to meet this burden, DEFENDANT failed to properly calculate and/or pay all required
27 compensation for work performed by the AGGRIEVED EMPLOYEES and violated the
28 California Labor Code and regulations promulgated thereunder as herein alleged.

1 17. Specifically as to PLAINTIFF, he was from time to time unable to take off duty
2 meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
3 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
4 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
5 provide PLAINTIFF with a second off-duty meal period each workday in which he was
6 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal
7 and rest breaks without additional compensation and in accordance with DEFENDANT'S strict
8 corporate policy and practice. DEFENDANT also provided PLAINTIFF with paystubs that
9 failed to accurately display the information required by Cal. Lab. Code § 226(a). To date,
10 DEFENDANT has not fully paid PLAINTIFF all wages still owed to them or any penalty wages
11 owed to them under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF
12 individually does not exceed the sum or value of \$75,000.

13 **JURISDICTION AND VENUE**

14 18. This Court has jurisdiction over this Action pursuant to California Code of Civil
15 Procedure, Section 410.10.

16 19. Venue is proper in this Court pursuant to California Code of Civil Procedure,
17 Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant times
18 maintained offices and facilities in this County and/or conducts substantial business in this
19 County, and (ii) committed the wrongful conduct herein alleged in this County against members
20 of the AGGRIEVED EMPLOYEES.

21 **FIRST CAUSE OF ACTION**

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

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

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

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

27 21. PAGA is a mechanism by which the State of California itself can enforce state
28 labor laws through the employee suing under the PAGA who does so as the proxy or agent of

1 the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
2 fundamentally a law enforcement action designed to protect the public and not to benefit private
3 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
4 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
5 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
6 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
7 Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be
8 subject to arbitration.

9 22. PLAINTIFF, and such persons that may be added from time to time who satisfy
10 the requirements and exhaust the administrative procedures under the Private Attorney General
11 Act, bring this Representative Action on behalf of the State of California with respect to
12 themselves and all individuals who are or previously were employed by DEFENDANT and
13 classified as non-exempt employees in California during the time period of April 6, 2019 until
14 the present (the "AGGRIEVED EMPLOYEES").

15 23. On November 4, 2020, PLAINTIFF gave written notice by certified mail to the
16 Labor and Workforce Development Agency (the "Agency") and the employer of the
17 specific provisions of this code alleged to have been violated as required by Labor Code §
18 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
19 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
20 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
21 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
22 to all AGGRIEVED EMPLOYEES as herein defined.

23 24. The policies, acts and practices heretofore described were and are an unlawful
24 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
25 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
26 minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal
27 and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
28 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,

1 including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226,
2 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, and 2804,
3 and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a
4 result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the
5 Labor Code Private Attorney General Act of 2004 as the representative of the State of
6 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
7 EMPLOYEES.

8 25. Some or all of the conduct and violations alleged herein occurred during the
9 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
10 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
11 that affected other AGGRIEVED EMPLOYEES. (Carrington v. Starbucks Corp. (2018) 30
12 Cal.App.5th 504, 519; See also Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal.
13 App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one
14 Labor Code violation committed by an employer—to pursue penalties for all the Labor Code
15 violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for a judgment against each Defendants, jointly and severally, as follows:

1. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

- a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004
- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §1197.

DATED: January 8, 2021

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for Plaintiffs

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EXHIBIT 1



3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Tel: 619-599-8292
Fax: 619-599-8291
Toll Free: 1-888-498-6999
www.jcl-lawfirm.com
Jean-Claude Lapuyade, Esq.
jlapuyade@jcl-lawfirm.com

November 4, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

M & M AUTOMOTIVE GROUP, INC.
DBA VOLKSWAGEN OF OAKLAND
c/o Michael Patrick Murphy
2740 Broadway
Oakland, CA 94612
Via Certified Mail & Return Receipt No.:
7019 1640 0000 6894 7268

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, and 2804 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents CARLOS CORTEZ OCEGUERA (“Client”) and other aggrieved employees in a class action against M & M AUTOMOTIVE GROUP, INC. dba VOLKSWAGEN OF OAKLAND (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Client and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Client was employed by Defendant in California from January 2019 to August 2020. Client was paid on an hourly basis and entitled incentive compensation and to legally required meal and rest periods. The aggrieved employees intended to be covered by this correspondence include all of Defendant’s employees, including all non-exempt and exempt employees. At all times during his employment, Defendant failed to, among other things, provide Client, and all those similarly situated, with all legally mandated off-duty meal and rest periods and overtime compensation at one-and-one-half times the regular rate of pay. Defendant also failed to provide

Plaintiff with accurate and complete wage statements reflecting the number of hours worked and the rate of pay.

As a consequence, Client contends that Defendant failed to fully compensate him, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Client contend that Defendants' conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, and 2804 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Client, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Clients, and (v) sets forth the illegal practices used by Defendants. Client therefore incorporate 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. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Clients and all aggrieved California employees and Class Members

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

Sincerely,
JCL LAW FIRM, APC

A handwritten signature in dark ink, appearing to read 'JC Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)255-9047
Facsimile: (858) 404-9203

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)599-8292
Facsimile: (619) 599-8291

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

CARLOS CORTEZ OCEGUERA on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

M & M AUTOMOTIVE GROUP, INC. (dba
Volkswagen of Oakland); and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY 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 PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and

DEMAND FOR A JURY TRIAL

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

5 **PRELIMINARY ALLEGATIONS**

6 1. Defendant M & M AUTOMOTIVE GROUP, INC. (dba Volkswagen of
7 Oakland) (“DEFENDANT” or “Defendant”) is a California Corporation and at all relevant
8 times mentioned herein conducted and continues to conduct substantial and regular business
9 throughout California.

10 2. DEFENDANT, owns and operates a car dealership in Oakland, California.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to minimum wages, overtime pay and meal and rest periods from January
13 2019 to August 2020. PLAINTIFF was at all times relevant mentioned herein classified by
14 DEFENDANT as a non-exempt employee paid on an hourly basis.

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 the 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 class,
23 defined as all individuals who are or previously were employed by DEFENDANT in California
24 and received a wage statement / paystub (the “226 CLASS”) at any time during the period
25 beginning one (1) year prior to the filing of the Complaint and ending on the date as determined
26 by the Court (the “226 CLASS PERIOD”). The amount in controversy for the aggregate claim
27 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

28 6. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during

1 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’S uniform policy and practice
2 which failed to lawfully compensate these employees for all their time worked.
3 DEFENDANT’S uniform policy and practice alleged herein is an unlawful, unfair and
4 deceptive business practice whereby DEFENDANTS retained and continue to retain wages due
5 to PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other
6 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
7 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the
8 CALIFORNIA CLASS who have been economically injured by DEFENDANT’S past and
9 current unlawful conduct, and all other appropriate legal and equitable relief.

10 7. To the extent this action includes a cause of action for violations of the Private
11 Attorneys’ General Act (“PAGA”), PLAINTIFF brings this representative PAGA action on
12 behalf of himself, the State of California, and a group of Aggrieved Employees, defined as all
13 individuals who were employed by DEFENDANT in California and classified as either non-
14 exempt employees and/or as exempt employees, including commissioned employees subject to
15 the inside sales exemption, at any time during the period beginning one year from the filing of
16 Plaintiff’s claim with the Labor and Workforce Development Agency, and ending on the date as
17 determined by the Court.

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

27 9. The agents, servants and/or employees of the Defendants and each of them acting
28 on behalf of the Defendants acted within the course and scope of his, her or its authority as the

1 agent, servant and/or employee of the Defendants, and personally participated in the conduct
2 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
3 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
4 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
5 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
6 Defendants' agents, servants and/or employees.

7 **THE CONDUCT**

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

23 11. As a result of their rigorous work schedules, PLAINTIFF and other
24 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
25 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
26 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT
27 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
28 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a

1 second off-duty meal period each workday in which these employees were required by
2 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other CALIFORNIA
3 CLASS Members therefore forfeited meal breaks without additional compensation and in
4 accordance with DEFENDANT's strict corporate policy and practice

5 12. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
6 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
7 without being provided ten (10) minute rest periods. Further, these employees were denied their
8 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
9 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
10 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
11 minutes for some shifts worked of ten (10) hours or more. When they did have an opportunity to
12 take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
13 remain on the premises and subject to DEFENDANT's control. If they were to leave
14 DEFENDANT's premises, PLAINTIFF and the CALIFORNIA CLASS Members were required
15 to clock out. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided
16 with one hour wages in lieu thereof. As a result of their rigorous work schedules, and in
17 compliance with DEFENDANT's policy, PLAINTIFF and other CALIFORNIA CLASS
18 Members were periodically denied their proper rest periods by DEFENDANT and
19 DEFENDANT'S managers.

20 13. In addition, because of DEFENDANT's implemented a commission pay plan for
21 some of the Aggrieved Employees, DEFENDANT failed to compensate the Aggrieved
22 Employees for their rest periods as required by the applicable Wage Order and Labor Code at
23 their regular rate of pay. DEFENDANT did not have a policy or practice which paid for off-
24 duty rest periods to PLAINTIFF and the other Aggrieved Employees at their regular rate. As a
25 result, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS
26 Members with all the legally required paid rest periods is evidenced by DEFENDANT's
27 business records.

1 14. From time to time, when PLAINTIFF and other CALIFORNIA CLASS
2 Members missed meal and rest breaks, or when they worked during what was supposed to be
3 their meal breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of
4 the 226 CLASS with complete and accurate wage statements which failed to show, among other
5 things, the correct time and overtime worked, including, work performed in excess of eight (8)
6 hours in a workday and/or forty (40) hours in any workweek, and the correct penalty payments
7 or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer shall
8 furnish each of his or her employees with an accurate itemized wage statement in writing
9 showing, among other things, gross wages earned and all applicable hourly rates in effect during
10 the pay period and the corresponding amount of time worked at each hourly rate. Aside from the
11 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
12 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
13 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of
14 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

15 15. Additionally, from time-to-time during the 226 CLASS PERIOD, DEFENDANT
16 issued PLAINTIFF and members of the 226 CLASS inaccurate wage statements that failed to
17 show, among other things, all applicable hourly rates in effect during the pay period and the
18 corresponding amount of time worked at each hourly rate and correct rates of pay. For instance,
19 for the pay period between February 24, 2020 and March 1, 2020, PLAINTIFF received
20 remuneration from DEFENDANTS described as “OT DT Premium” in the gross amount of
21 \$20.36. DEFENDANT violated California Labor Code Section 226 by failing to list the
22 applicable hourly rate and the corresponding number of hours worked at the applicable hourly
23 rate for this line item of remuneration described as “OT DT Premium”. PLAINTIFF, and all
24 those similarly situated members of the 226 CLASS, suffered damage as a result of
25 DEFENDANTS’ aforementioned violation because he could not promptly and easily determine
26 from the wage statement alone the applicable hourly rate and the corresponding number of
27 hours worked at the applicable hourly rate for this line item of remuneration described as “OT
28 DT Premium”.

16. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*(the “UCL”), by engaging in a company-wide policy and procedure which failed to accurately calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA CLASS Members. The proper recording of these employees’ missed meal and rest breaks is the DEFENDANT’S burden. As a result of DEFENDANT’S intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all required compensation for work performed by the members of the CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated thereunder as herein alleged.

17. Specifically as to PLAINTIFF, he was from time to time unable to take off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday in which he was required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANT'S strict corporate policy and practice. DEFENDANT also provided PLAINTIFF with paystubs that failed to accurately display the information required by Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF all wages still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

JURISDICTION AND VENUE

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

1 19. Venue is proper in this Court pursuant to California Code of Civil Procedure,
2 Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant times
3 maintained offices and facilities in this County and/or conducts substantial business in this
4 County, and (ii) committed the wrongful conduct herein alleged in this County against members
5 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

6 **THE CALIFORNIA CLASS**

7 20. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
8 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
9 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
10 individuals who are or previously were employed by DEFENDANT in California and classified
11 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
12 beginning four (4) years prior to the filing of the original complaint and ending on the date as
13 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
14 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
15 (\$5,000,000.00).

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

19 22. DEFENDANT, as a matter of company policy, practice and procedure, and in
20 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
21 requirements, and the applicable provisions of California law, intentionally, knowingly, and
22 willfully, engaged in a practice whereby DEFENDANT systematically failed to provide
23 compliant meal and rest breaks missed by PLAINTIFF and the other members of the
24 CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required
25 employees to perform this work and permitted or suffered to permit this work.

26 23. DEFENDANT has the legal burden to establish that each and every
27 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
28 required by California laws. DEFENDANT, however, as a matter of uniform and systematic

1 policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and
2 still fails to have in place a policy or practice to ensure that each and every CALIFORNIA
3 CLASS Member is paid as required by law, so as to satisfy their burden. This common business
4 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
5 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions
6 Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
7 claim.

8 24. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
9 CLASS Members is impracticable.

10 25. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
11 California law by:

- 12 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
13 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
14 company policies, practices and procedures that failed to pay all wages due the
15 CALIFORNIA CLASS for all time worked;
- 16 b. Committing an act of unfair competition in violation of the California Unfair
17 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
18 provide mandatory meal and/or rest breaks to PLAINTIFFS and the
19 CALIFORNIA CLASS members;
- 20 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
21 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
22 company policies, practices and procedures that uniformly and systematically
23 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
24 CLASS for all time worked, including minimum wages owed and overtime
25 wages owed for work performed by these employees;

26 26. The Class Action meets the statutory prerequisites for the maintenance of a Class
27 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:
28

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an hourly basis who was subjected to the DEFENDANT’S deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT’S employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and
- d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

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

- 1 a. Without class certification and determination of declaratory, injunctive, statutory
2 and other legal questions within the class format, prosecution of separate actions
3 by individual members of the CALIFORNIA CLASS will create the risk of:
- 4 i. Inconsistent or varying adjudications with respect to individual members
5 of the CALIFORNIA CLASS which would establish incompatible
6 standards of conduct for the parties opposing the CALIFORNIA CLASS;
7 and/or;
- 8 ii. Adjudication with respect to individual members of the CALIFORNIA
9 CLASS which would as a practical matter be dispositive of interests of
10 the other members not party to the adjudication or substantially impair or
11 impede their ability to protect their interests.
- 12 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
13 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
14 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
15 DEFENDANT uniformly failed to pay all wages due for all time worked by the
16 members of the CALIFORNIA CLASS as required by law;
- 17 i. With respect to the First Cause of Action, the final relief on behalf of the
18 CALIFORNIA CLASS sought does not relate exclusively to restitution
19 because through this claim PLAINTIFF seeks declaratory relief holding
20 that the DEFENDANT's policy and practices constitute unfair
21 competition, along with declaratory relief, injunctive relief, and incidental
22 equitable relief as may be necessary to prevent and remedy the conduct
23 declared to constitute unfair competition;
- 24 c. Common questions of law and fact exist as to the members of the CALIFORNIA
25 CLASS, with respect to the practices and violations of California law as listed
26 above, and predominate over any question affecting only individual
27 CALIFORNIA CLASS Members, and a Class Action is superior to other
28

1 available methods for the fair and efficient adjudication of the controversy,
2 including consideration of:

3 i. The interests of the members of the CALIFORNIA CLASS in
4 individually controlling the prosecution or defense of separate actions in
5 that the substantial expense of individual actions will be avoided to
6 recover the relatively small amount of economic losses sustained by the
7 individual CALIFORNIA CLASS Members when compared to the
8 substantial expense and burden of individual prosecution of this
9 litigation;

10 ii. Class certification will obviate the need for unduly duplicative litigation
11 that would create the risk of:

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

15 2. Adjudications with respect to individual members of the
16 CALIFORNIA CLASS would as a practical matter be dispositive
17 of the interests of the other members not parties to the
18 adjudication or substantially impair or impede their ability to
19 protect their interests;

20 iii. In the context of wage litigation, because a substantial number of
21 individual CALIFORNIA CLASS Members will avoid asserting their
22 legal rights out of fear of retaliation by DEFENDANT, which may
23 adversely affect an individual's job with DEFENDANT or with a
24 subsequent employer, the Class Action is the only means to assert their
25 claims through a representative; and

26 iv. A class action is superior to other available methods for the fair and
27 efficient adjudication of this litigation because class treatment will
28 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.

28. The 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;

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

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

15 **THE CALIFORNIA LABOR SUB-CLASS and 226 CLASS**

16 30. PLAINTIFF further brings the Second, Third, Fourth, Fifth, and Seventh, causes
17 of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
18 CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at
19 any time during the period three (3) years prior to the filing of the original complaint and ending
20 on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD")
21 pursuant to Cal. Code of Civ. Proc. § 382. PLAINTIFF finally brings the Sixth cause of Action
22 on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS
23 classified as non-exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any time
24 during the period one (1) year prior to the filing of the original complaint and ending on the date
25 as determined by the Court (the "226 CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. §
26 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-
27 CLASS Members and 226 CLASS Members is under five million dollars (\$5,000,000.00).
28

1 31. DEFENDANT, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and
4 willfully, engaged in a practice whereby DEFENDANT failed to provide compliant meal and
5 rest breaks to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
6 and pay wages and premiums owed to these employees, even though DEFENDANT enjoyed the
7 benefit of this work, required employees to perform this work and permitted or suffered to
8 permit this work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
9 CLASS Members wages and premiums to which these employees are entitled in order to
10 unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to
11 toll claims by the CALIFORNIA LABOR SUB-CLASS and 226 CLASS against
12 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD and 226 CLAS PERIOD
13 should be adjusted accordingly.

14 32. DEFENDANT maintains records from which the Court can ascertain and
15 identify by name and job title, each of DEFENDANT’S employees who have been
16 systematically, intentionally and uniformly subjected to DEFENDANT’S company policy,
17 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint
18 to include any additional job titles of similarly situated employees when they have been
19 identified.

20 33. The CALIFORNIA LABOR SUB-CLASS and 226 CLAS are so numerous that
21 joinder of all CALIFORNIA LABOR SUB-CLASS and 226 CLAS Members is impracticable

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

- 24 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
25 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
26 missed meal and rest breaks in violation of the California Labor Code and
27 California regulations and the applicable California Wage Order;
28

- b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of the 226 CLAS with accurate itemized wage statements;
- d. Whether DEFENDANT have engaged in unfair competition by the above-listed conduct;
- e. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- f. Whether DEFENDANT's conduct was willful.

35. 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 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANTS are 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 DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. 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 all accurate and applicable overtime rates in effect

1 during the pay period and the corresponding amount of time worked at each
2 overtime rate by the employee;

- 3 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
4 employee is discharged or quits from employment, the employer must pay the
5 employee all wages due without abatement, by failing to tender full payment
6 and/or restitution of wages owed or in the manner required by California law to
7 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
8 their employment.

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

- 11 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS and 226
12 CLAS are so numerous that the joinder of all CALIFORNIA LABOR SUB-
13 CLASS and 226 CLASS Members is impracticable and the disposition of their
14 claims as a class will benefit the parties and the Court;
- 15 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
16 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
17 CLASS and 226 CLASS and will apply uniformly to every member of the
18 CALIFORNIA LABOR SUB-CLASS and 226 CLASS;
- 19 c. The claims of the representative PLAINTIFF are typical of the claims of each
20 member of the CALIFORNIA LABOR SUB-CLASS and 226 CLAS.
21 PLAINTIFF, like all the other members of the CALIFORNIA LABORSUB-
22 CLASS, was a non-exempt employee paid on an hourly basis who was subjected
23 to the DEFENDANT’S practice and policy which failed to pay the correct
24 amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF
25 sustained economic injury as a result of DEFENDANT’s employment practices.
26 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS and
27 226 CLASS were and are similarly or identically harmed by the same unlawful,
28

1 deceptive, unfair and pervasive pattern of misconduct engaged in by
2 DEFENDANT; and

- 3 d. The representative PLAINTIFF will fairly and adequately represent and protect
4 the interest of the CALIFORNIA LABOR SUB-CLASS and 226 CLASS, and
5 has retained counsel who are competent and experienced in Class Action
6 litigation. There are no material conflicts between the claims of the
7 representative PLAINTIFF and the members of the CALIFORNIA LABOR
8 SUB-CLASS and 226 CLASS that would make class certification inappropriate.
9 Counsel for the CALIFORNIA LABOR SUB-CLASS and 226 CLAS will
10 vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
11 Members and 226 CLASS.

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

- 14 a. Without class certification and determination of declaratory, injunctive, statutory
15 and other legal questions within the class format, prosecution of separate actions
16 by individual members of the CALIFORNIA LABOR SUB-CLASS and 226
17 CLASS will create the risk of:
- 18 i. Inconsistent or varying adjudications with respect to individual members
19 of the CALIFORNIA LABOR SUB-CLASS and 226 CLASS which
20 would establish incompatible standards of conduct for the parties
21 opposing the CALIFORNIA LABOR SUB-CLASS; or
- 22 ii. Adjudication with respect to individual members of the CALIFORNIA
23 LABOR SUB-CLASS and 226 CLASS which would as a practical matter
24 be dispositive of interests of the other members not party to the
25 adjudication or substantially impair or impede their ability to protect their
26 interests.
- 27 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS and 226 CLASS
28 have acted or refused to act on grounds generally applicable to the

CALIFORNIA LABOR SUB-CLASS and 226 CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS and 226 CLASS as a whole in that DEFENDANTS uniformly failed to pay all wages due for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

c. Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS and 226 CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS and 226 CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS and 226 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 LABOR SUB-CLASS and 226 CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS and 226 CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or,

2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS and 226 CLASS would as a

1 practical matter be dispositive of the interests of the other
2 members not parties to the adjudication or substantially impair or
3 impede their ability to protect their interests;

4 iii. In the context of wage litigation because a substantial number of
5 individual CALIFORNIA LABOR SUB-CLASS and 226 CLASS
6 Members will avoid asserting their legal rights out of fear of retaliation
7 by DEFENDANTS, which may adversely affect an individual's job with
8 DEFENDANTS or with a subsequent employer, the Class Action is the
9 only means to assert their claims through a representative; and,

10 iv. A class action is superior to other available methods for the fair and
11 efficient adjudication of this litigation because class treatment will
12 obviate the need for unduly and unnecessary duplicative litigation that is
13 likely to result in the absence of certification of this action pursuant to
14 Cal. Code of Civ. Proc. § 382.

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

- 17 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
18 CLASS and 226 CLASS predominate over any question affecting only individual
19 CALIFORNIA LABOR SUB-CLASS and 226 CLASS Members;
- 20 b. A Class Action is superior to any other available method for the fair and efficient
21 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
22 CLASS and 226 CLASS because in the context of employment litigation a
23 substantial number of individual CALIFORNIA LABOR SUB-CLASS and 226
24 CLASS Members will avoid asserting their rights individually out of fear of
25 retaliation or adverse impact on their employment;
- 26 c. The members of the CALIFORNIA LABOR SUB-CLASS and 226 CLASS are
27 so numerous that it is impractical to bring all members of the CALIFORNIA
28 LABOR SUB-CLASS and 226 CLASS before the Court;

- 1 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS and 226
2 CLASS Members, will not be able to obtain effective and economic legal redress
3 unless the action is maintained as a Class Action;
- 4 e. There is a community of interest in obtaining appropriate legal and equitable
5 relief for the acts of unfair competition, statutory violations and other
6 improprieties, and in obtaining adequate compensation for the damages and
7 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
8 LABOR SUB-CLASS and 226 CLASS;
- 9 f. There is a community of interest in ensuring that the combined assets of
10 DEFENDANT are sufficient to adequately compensate the members of the
11 CALIFORNIA LABOR SUB-CLASS and 226 CLASS for the injuries sustained;
- 12 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
13 CALIFORNIA LABOR SUB-CLASS and 226 CLASS, thereby making final
14 class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
15 CLASS and 226 CLASS as a whole;
- 16 h. The members of the CALIFORNIA LABOR SUB-CLASS and 226 CLASS are
17 readily ascertainable from the business records of DEFENDANT. The
18 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS
19 Members classified as non-exempt employees during the CALIFORNIA
20 LABOR SUB-CLASS PERIOD; and
- 21 i. Class treatment provides manageable judicial treatment calculated to bring an
22 efficient and rapid conclusion to all litigation of all wage and hour related claims
23 arising out of the conduct of DEFENDANT as to the members of the
24 CALIFORNIA LABOR SUB-CLASS and 226 CLASS.
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1 **FIRST CAUSE OF ACTION**

2 **UNLAWFUL BUSINESS PRACTICES**

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

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

8 40. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

14 Any person who engages, has engaged, or proposes to engage in unfair competition may
15 be enjoined in any court of competent jurisdiction. The court may make such orders or
16 judgments, including the appointment of a receiver, as may be necessary to prevent the
17 use or employment by any person of any practice which constitutes unfair competition,
as defined in this chapter, or as may be necessary to restore to any person in interest any
money or property, real or personal, which may have been acquired by means of such
unfair competition. (Cal. Bus. & Prof. Code § 17203).

18 42. By the conduct alleged herein, DEFENDANT has engaged and continues to
19 engage in a business practice which violates California law, including but not limited to, the
20 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
21 including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198,
22 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
23 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
24 unfair competition, including restitution of wages wrongfully withheld.

25 43. By the conduct alleged herein, DEFENDANT’S practices were unlawful and
26 unfair in that these practices violated public policy, were immoral, unethical, oppressive
27 unscrupulous or substantially injurious to employees, and were without valid justification or
28 utility for which this Court should issue equitable and injunctive relief pursuant to Section

1 17203 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 44. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
4 fraudulent in that DEFENDANT’S uniform policy and practice failed to pay PLAINTIFF, and
5 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
6 worked, failed to pay reporting time pay, and failed to reimburse for expenses due to a
7 systematic practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
8 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
9 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. &
10 Prof. Code § 17203, including restitution of wages wrongfully withheld.

11 45. By the conduct alleged herein, DEFENDANT’s practices were also unlawful,
12 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFF and the
13 other members of the CALIFORNIA CLASS to be underpaid during their employment with
14 DEFENDANT.

15 46. By the conduct alleged herein, DEFENDANT’s practices were also unfair and
16 deceptive in that DEFENDANT’s uniform policies, practices and procedures failed to provide
17 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

23 48. PLAINTIFF further demands on behalf of himself and on behalf of each
24 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
25 was not timely provided as required by law.

26 49. By and through the unlawful and unfair business practices described herein,
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
28 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them

1 of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
2 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly
3 compete against competitors who comply with the law.

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

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

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

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

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(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL Defendants)

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1 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS in regards to minimum wage pay.

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

9 62. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
11 receive the correct minimum wage compensation for their time worked for DEFENDANTS.

12 63. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
13 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
14 they were entitled to, constituting a failure to pay all earned wages.

15 64. 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 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
20 according to proof at trial.

21 65. DEFENDANT knew or should have known that PLAINTIFF and the other
22 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time
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 the
27 correct minimum wages for their time worked.

28 66. In performing the acts and practices herein alleged in violation of California labor
laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all
time worked and provide them with requisite compensation, DEFENDANT acted and continue

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

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

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PAY OVERTIME COMPENSATION**
18 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

19 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
20 **Defendants)**

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

24 69. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
25 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
26 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
27 properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime
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1 worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40)
2 hours in any workweek.

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

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

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

13 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
14 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
15 DEFENDANT and were not paid for all the time they worked, including overtime work.

16 74. 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 failed to accurately record overtime
19 worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
20 and denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA
21 LABOR SUB-CLASS for overtime worked, including, the work performed in excess of eight
(8) hours in a workday and/or forty (40) hours in any workweek.

22 75. In committing these violations of the California Labor Code, DEFENDANT acted
23 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
24 the California Labor Code, the Industrial Welfare Commission requirements and other
25 applicable laws and regulations.

26 76. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
27 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
28 receive full compensation for all overtime worked.

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

9 78. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
10 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
11 they were entitled to, constituting a failure to pay all earned wages.

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

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

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

1 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
2 applicable overtime rate.

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

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

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FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

84. 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.

85. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

86. 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 meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

87. 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.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

88. 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.

89. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. 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.

90. 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.

91. 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.

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(Alleged by PLAINTIFF and the 226 CLASS and against all Defendants)

92. PLAINTIFFS, and the other members of the 226 CLASS, reallege and

93. Cal. Labor Code § 226 provides that an employer must furnish employees with

- a. Gross wages earned;
- b. 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;
- c. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- d. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- e. Net wages earned;
- f. The inclusive dates of the period for which the employee is paid;
- g. 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;
- h. The name and address of the legal entity that is the employer; and
- i. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

1 94. When DEFENDANT did not accurately record PLAINTIFF's and other 226
2 CLASS Members' missed meal and rest breaks and wages owed, DEFENDANT also failed to
3 provide PLAINTIFF and the other members of the 226 CLASS with complete and accurate
4 wage statements which failed to show, among other things, missed meal and rest periods and
5 wages owed to PLAINTIFF and other 226 CLASS Members. Cal. Lab. Code § 226 provides
6 that every employer shall furnish each of his or her employees with an accurate itemized wage
7 statement in writing showing, among other things, gross wages earned and all applicable hourly
8 rates in effect during the pay period and the corresponding amount of time worked at each
9 hourly rate. Aside from the violations listed above in this paragraph, DEFENDANT failed to
10 issue to PLAINTIFF and other 226 CLASS Members an itemized wage statement that lists all
11 the requirements under California Labor Code 226 *et seq.* including the applicable hourly rate
12 and the corresponding number of hours worked at the applicable hourly rate for this line item of
13 remuneration described as "OT DT Premium". As a result, from time to time DEFENDANT
14 provided PLAINTIFF and the other members of the 226 CLASS with wage statements which
15 violated Cal. Lab. Code § 226.

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

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES WHEN DUE**

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

4 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
5 **Defendants)**

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

9 97. Cal. Lab. Code § 200 provides that:

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

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

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

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

100. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
SUB-CLASS Members' employment contract.

101. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in
accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
who is discharged or who quits, the wages of the employee shall continue as a

penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

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

103. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF demand up to thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the 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, PLAINTIFFS pray for a judgment against each Defendants, 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, and Seventh Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

- 1 b. Compensatory damages, according to proof at trial, including compensatory
2 damages for minimum wages, reporting time wages, and other compensation due
3 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
4 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD
5 plus interest thereon at the statutory rate;
- 6 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
7 the applicable IWC Wage Order;
- 8 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
9 which a violation occurs and one hundred dollars (\$100) per member of the
10 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
11 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
12 an award of costs for violation of Cal. Lab. Code § 226; and
- 13 e. The wages of all terminated employees from the CALIFORNIA LABOR SUB-
14 CLASS as a penalty from the due date thereof at the same rate until paid or until
15 an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 16 3. On all claims:
- 17 a. An award of interest, including prejudgment interest at the legal rate;
- 18 b. Such other and further relief as the Court deems just and equitable; and
- 19 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the
20 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194
21 and/or §1197.

22 DATED: _____, 2020

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24 **ZAKAY LAW GROUP, APLC**

25
26 By: _____

27 Shani O. Zakay
28 Attorney for Plaintiffs

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DEMAND FOR A JURY TRIAL

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

DATED:_____, 2020

ZAKAY LAW GROUP, APLC

By:_____
Shani O. Zakay
Attorney for Plaintiff