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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JEREMY KIMBALL, as an individual and on
behalf of all employees similarly situated,

Plaintiff,

v.

R.F. MACDONALD CO., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2020-00046428-CU-OE-CTL

CLASS ACTION COMPLAINT

1. Violation of Labor Code §§ 510, 1194 (Failure to Pay All Wages);
2. Violation of Labor Code §§ 226.7, 512 (Failure to Provide Meal Periods);
3. Violation of Labor Code § 226.7 (Failure to Provide Rest Periods);
4. Violation of Labor Code §§ 226, (Failure to Keep Accurate Itemized Wage Statements);
5. Violation of Labor Code §§ 201-203 (Failure to Pay Wages Upon Termination of Employment);
6. Violation of Labor Code § 2802, (Failure to Reimburse for Necessary Expenditures); and
7. Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practices).

DEMAND FOR JURY TRIAL

1 Plaintiff JEREMY KIMBALL (“Mr. Kimball” or “Plaintiff”) on behalf of himself and all
2 others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is a class action brought on behalf of Plaintiff and the class he seeks to
5 represent (“Plaintiff Class” or “Class Members”). Class Members consist of all non-exempt,
6 hourly-paid employees currently and/or formerly employed by R.F. MACDONALD CO., in the
7 State of California during the Class Period. The term “Class Period” is defined as four (4) years
8 prior to the filing of this Complaint through the date final judgment is entered. Plaintiff reserves
9 the right to amend this Complaint to reflect a different “Class Period” or “Plaintiff Class” as
10 further discovery is conducted.

11 2. Plaintiff, individually and on behalf of the class he seeks to represent, seeks relief
12 against R.F. MACDONALD CO. (“Defendant”) for Defendant’s: failure to pay all wages due,
13 including minimum wage, regular and overtime wages; failure to provide meal periods or
14 compensation in lieu thereof; failure to provide rest periods or compensation in lieu thereof;
15 failure to provide accurate itemized wage statements; failure to pay wages of terminated or
16 resigned employees; and failure to reimburse for necessary business expenditures.

17 3. Plaintiff seeks equitable remedies in the form of declaratory relief and injunctive
18 relief, and relief under Business and Professions Code section 17200 et seq. for unfair business
19 practices.

20 4. At all relevant times herein, Defendants carried out a joint scheme, business plan
21 or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to
22 the other Defendants. Defendants have consistently maintained and enforced against Plaintiff
23 Class the following unlawful practices and policies:

- 24 (a) willfully refusing to pay Plaintiff and Plaintiff Class for all hours worked,
25 including minimum wage, regular and overtime;
26 (b) willfully refusing to permit Plaintiff and Plaintiff Class from taking meal
27 periods or compensation in lieu thereof;
28

- 1 (c) willfully refusing to permit Plaintiff and Plaintiff Class from taking rest
2 periods or compensation in lieu thereof;
- 3 (d) willfully refusing to furnish to Plaintiff and Plaintiff Class accurate
4 itemized wage statements upon payment of wages;
- 5 (e) willfully refusing to compensate Plaintiff and certain members of the
6 Plaintiff Class wages due and owing at the time of Plaintiff and Plaintiff
7 Class' employment with Defendants ended; and
- 8 (f) willfully refusing to reimburse Plaintiff and Plaintiff Class for necessary
9 business expenditures.

10 **JURISDICTION AND VENUE**

11 5. Venue is proper in this judicial district and in the County of San Diego, California
12 because Defendant maintained its locations and/or transacted business in this county, the
13 obligations and liability arise in this county, and work was performed by members of the proposed
14 class made the subject of this action in this county.

15 6. The California Superior Court has jurisdiction in the matter because the individual
16 claims are under the Seventy-Five Thousand Dollar (\$75,000.00) jurisdictional threshold for
17 Federal Court and. Upon information and belief, Plaintiff is a resident of and/or domiciled in the
18 State of California. Defendant is a Corporation headquartered in California and doing business
19 in the state of California.

20 7. Further, there is no federal question at issue as the issues herein is based solely on
21 California Statutes and law including the California Labor Code, Industrial Welfare Commission
22 Wage Orders, *Code of Civil Procedure*, *Rule of Court*, and *Business and Professions Code*.

23 **THE PARTIES**

24 **A. The Plaintiff**

25 8. Plaintiff, at all relevant times herein, was Defendant's employee and was entitled
26 to compensation for all hours worked, including regular time and overtime compensation, and
27 penalties from Defendant. Plaintiff was employed by Defendant as a non-exempt, hourly paid
28 employee during the Class Period. Specifically, Plaintiff worked as a Boiler Technician and

Boiler Maker for Defendant during the Class Period at Defendant's facility located at 7320 Convoy Court, San Diego, California 92111. Each of the Class Members are identifiable, current and/or former similarly situated persons who were employed in non-exempt hourly positions in California by Defendant during the Class Period.

B. Defendant

9. Plaintiff is informed and believes, and based thereon alleges, that R.F. MACDONALD CO., is a California corporation. Defendant is involved in the sales and service of boilers and pumps for commercial and industrial applications. On information and belief, Defendant was and/or is the employer of Plaintiff and Plaintiff Class during the Class Period. Plaintiff also alleges that Defendant is conducting business in good standing in California.

10. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief alleges that these Defendants are legally responsible for the payment of overtime compensation, rest and meal period compensation, and wages to Plaintiff and Plaintiff Class by virtue of their unlawful practices, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of each DOE defendant when ascertained.

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendant. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and Plaintiff Class.

12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the Defendant, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with permission and consent of the Defendant. Plaintiff also alleges the acts of each Defendant are

1 legally attributable to the other Defendants.

2 13. The above Defendant, managing agents, and supervisors aided, abetted, condoned,
3 permitted, approved, authorized and/or ratified the unlawful acts described herein.

4 **GENERAL ALLEGATIONS**

5 14. Plaintiff began his employment with Defendant in or around October 10, 2019
6 until March 7, 2020. Plaintiff was employed by Defendant as a Boiler Technician and Boiler
7 Maker, where his job duties included, but were not limited to, fixing and repairing industrial steam
8 boilers.

9 15. Labor Code section 1194 provides that notwithstanding any agreement to work for
10 a lesser wage, an employee receiving less than the legal overtime compensation is entitled to
11 recover in a civil action the unpaid balance of his or her overtime compensation, including interest
12 thereon, reasonable attorneys' fees, and costs of suit.

13 16. Further, Business and Professions Code section 17203 provides that any person
14 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
15 Business and Professions Code section 17204 provides that any person who has suffered actual
16 injury and has lost money or property as a result of the unfair competition may bring an action in
17 a court of competent jurisdiction.

18 17. During all, or a portion of the Class Period, Plaintiff and each member of the
19 Plaintiff Class was employed by Defendant in the State of California.

20 18. Plaintiff and Class Members were non-exempt employees covered under one or
21 more IWC Wage Order(s), and Labor Code section 510, and/or other applicable Wage Orders,
22 regulations and statutes, and each Class Member was not subject to an exemption for executive,
23 administrative or professional employees, which imposed obligations on the part of Defendant to
24 pay Plaintiff and Class Members lawful overtime compensation.

25 19. Plaintiff and Plaintiff Class were covered by one or more IWC Wage Order(s), and
26 Labor Code section 226.7 and other applicable Wage Orders, regulations and statutes which
27 imposed an obligation on the part of Defendant to pay Plaintiff and Plaintiff Class rest and meal
28 period compensation.

1 20. During the Class Period, Defendant was obligated to pay Plaintiff and Class
2 Members for all hours worked. However, Defendant implemented a policy requiring Plaintiff
3 and Class members to work off-the-clock, as they were required to travel in between job sites, but
4 were not paid for this travel time. Furthermore, Defendant required Plaintiff and Class members
5 to clock-out at the end of their shift but to continue working completing paperwork while off-the-
6 clock. Plaintiff and Class members were not paid for this time.

7 21. During the Class Period, Defendant was obligated to pay Plaintiff and Class
8 Members overtime compensation for all hours worked in excess of eight (8) hours of work in one
9 (1) day or forty (40) hours in one (1) week, and double-time compensation for hours worked in
10 excess of twelve (12) in one (1) day. However, Defendant did not pay Plaintiff and Class
11 Members proper overtime and/or double-time rates for hours worked off-the-clock as required by
12 law. In fact, Defendant routinely changed Plaintiff's and Class Members' time records to reflect
13 that they worked less than forty (40) hours per week, when in fact Plaintiff and Class Members
14 regularly worked over eight (8) hours per day.

15 22. During the Class Period, Defendant was obligated to provide Plaintiff and Plaintiff
16 Class with a work-free meal period within the first five (5) hours of a shift when the workday was
17 longer than six (6) hours. Plaintiff and Class Members were entitled to a full, thirty (30) minute,
18 off-duty meal period when they worked in excess of six (6) hours within the first five (5) hours
19 of their shifts. However, Plaintiff and Class Members were routinely not provided with timely,
20 30-minute off-duty meal periods, and were not permitted and authorized to take uninterrupted rest
21 periods. For example, Defendant required Plaintiff and Class Members to push their breaks back
22 and take them late if they were in the middle of a job. Additionally, Defendant required Plaintiff
23 and Class Members to write down and document that they were provided with meal periods when
24 in fact they were not provided with such breaks during their shifts and were forced to work
25 through their breaks.

26 23. Additionally, Defendant was obligated to provide Plaintiff and Class Members
27 with a ten (10) minute rest break for every four (4) hours, or major fraction thereof, worked each
28 day. Defendant prevented Plaintiff and Class Members from taking rest breaks throughout their

1 shifts. This was due in part to Defendant's policy and practice of providing inadequate coverage
2 to allow for breaks to be taken. In addition, Defendant's policy did not provide Plaintiff and Class
3 Members with rest breaks throughout the Class Period.

4 24. Defendant further failed and/or refused to schedule Plaintiff and Plaintiff Class
5 during the Class Period so as to reasonably ensure they took meal and/or rest breaks within the
6 required statutory time frame as required by law.

7 25. Further, due to the pressure from Defendant, and in violation of Labor Code and
8 applicable IWC Wage Orders, Plaintiff was not authorized and permitted to take a second rest
9 period, on shifts exceeding six hours of work, and/or third rest breaks, on shifts exceeding ten
10 hours of work. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1030 (2012).
11 "Employees are entitled to 10 minutes rest for shifts from three and one-half to six hours in length,
12 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10
13 hours up to 14 hours, and so on."

14 26. Furthermore, Defendant failed and/or refused to pay Plaintiff and Class Members
15 one (1) hour's pay at the employees' regular rate of pay as premium compensation for
16 Defendant's failure to provide lawful thirty (30) minute, off-duty meal periods and failure to
17 provide lawful ten (10) minute rest periods within the statutory time frames.

18 27. Defendant failed to reimburse Plaintiff and Class Members for necessary business
19 expenditures, such as when they were required to use their personal vehicles to travel to various
20 job sites and locations. Plaintiff and Class members used their own vehicles, but were reimbursed
21 for mileage or gas.

22 28. Defendant continues to employ non-exempt, hourly-paid employees within
23 California.

24 29. Plaintiff and Class Members primarily performed non-exempt work, often in
25 excess of the maximum regular rate hours set forth in the applicable IWC Wage Order(s),
26 regulations or statutes, and therefore entitled the Plaintiff and Class Members to overtime
27 compensation at the rate of one and a half times their regular rate of pay and, when applicable,
28 double time compensation as set forth by the applicable IWC Wage Order(s), regulations and/or

1 statutes.

2 30. During the Class Period, Defendant required Plaintiff and Class Members to work
3 regular hours, off-the-clock hours, and overtime hours without lawful compensation in violation
4 of the applicable IWC Wage Order(s), regulations and statutes, and Defendant: (1) willfully failed
5 and refused, and continues to fail and refuse to pay compensation for all hours worked, including
6 lawful regular time and overtime compensation, to Class Members; and (2) willfully failed and
7 refused, and continues to fail and refuse to pay due and owing wages promptly upon termination
8 of employment to Plaintiff and affected Class Members.

9 31. Class Members who ended their employment with Defendant during the Class
10 Period, but were not paid the above due compensation for all hours worked timely upon the
11 termination of their employment as required by Labor Code sections 201, 202, and 203 are
12 entitled to penalties as provided by Labor Code section 203.

13 32. Defendant knew or should have known that Plaintiff and the Class were entitled
14 to receive accurate wage statements, which would include meal break premiums, and/or rest break
15 premiums, as required by Labor Code 226.

16 33. Defendant knew or should have known that Plaintiff and the Class were entitled
17 to timely payment of all wages earned upon termination. Plaintiff and the Class did not receive
18 payment of all wages, including but not limited to, meal and rest break premiums, in violation of
19 the Labor Code.

20 **CLASS ALLEGATIONS**

21 34. Plaintiff brings this action on behalf of himself and all other similarly situated
22 persons as a class action pursuant to Code of Civil Procedure section 382. The Class is composed
23 of and defined as follows:

- 24 (a) All persons who are employed or have been employed by Defendant in the
25 State of California, and who, within the four (4) years of the filing of this
26 Complaint to the present, have worked as non-exempt employees and were
27 entitled to be paid wages, including but not limited to the legally requisite
28 regular time rate, overtime rate and/or double-time rate;

- 1 (b) All persons who are employed or have been employed by Defendant in the
2 State of California, and who, within the four (4) years of the filing of this
3 Complaint to the present, have worked as non-exempt employees and were
4 entitled to be provided a meal period for shifts in excess of five (5) hours within
5 the first five (5) hours of such shifts, or in the alternative one (1) hour's pay
6 for each day during which a lawful meal period was not provided;
- 7 (c) All persons who are employed or have been employed by Defendant in the
8 State of California, and who, within the four (4) years of the filing of this
9 Complaint to the present, have worked as non-exempt employees and were
10 entitled to be provided a rest period for every four (4) hours, or major fraction
11 thereof, worked per day, or were not provided compensation of one (1) hour's
12 pay for each day on which such rest period(s) was not provided;
- 13 (d) All persons who are employed or have been employed by Defendant in the
14 State of California, and who, within the three (3) years of the filing of this
15 Complaint to the present, have worked as non-exempt employees and have
16 been terminated or resigned, and were entitled to be paid all wages pursuant to
17 Labor Code section 203 upon the end of their employment;
- 18 (e) All persons who are employed or have been employed by Defendant in the
19 State of California, and who, within the one (1) year of the filing of this
20 Complaint to the present have worked as non-exempt employees and were
21 entitled to be provided accurate payroll record or wage statement as required
22 under Labor Code sections 226 and 1174;
- 23 (f) All persons who are employed or have been employed by Defendant in the
24 State of California, and who, within the four (4) years of the filing of this
25 Complaint to the present, have worked as non-exempt employees and were
26 entitled to be reimbursed for necessary business expenditures; and
- 27 (g) All persons who are employed or have been employed by Defendant in the
28 State of California, and who, within the four (4) years of the filing of this

1 Complaint to the present, have worked as non-exempt employees and were
2 subjected to unlawful and unfair business practices within the meaning of
3 California's Unfair Competition Law and who suffered injury, including lost
4 money, as a result of Defendant's unlawful and unfair business practices.

5 35. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or
6 necessary to amend the definition of the Classes. Plaintiff will formally define and designate a
7 class definition at such time when Plaintiff seeks to certify the Classes alleged in this Complaint.

8 36. This action has been brought and may be maintained as a class action pursuant to
9 Code of Civil Procedure section 382 because there is a well-defined common interest of many
10 persons and it is impractical to bring them all before the court.

11 37. The Court should permit this action to be maintained as a class action pursuant to
12 Code of Civil Procedure section 382 because:

- 13 (a) The questions of law and fact common to the Plaintiff Class predominate
14 over any question affecting only individual class members;
- 15 (b) A class action is superior to any other available method for the fair and
16 efficient adjudication of the claims of the Class members;
- 17 (c) The Plaintiff Class is so numerous that it is impractical to bring all
18 members of the Plaintiff Class before the Court;
- 19 (d) Plaintiff and Class Members will not be able to obtain effective and
20 economic legal redress unless the action is maintained as a class action;
- 21 (e) There is a community of interest in obtaining appropriate legal and
22 equitable relief for the common law and statutory violations and other
23 improprieties and in obtaining adequate compensation for the damages
24 and injuries which Defendant's actions have inflicted upon the Plaintiff
25 Class;
- 26 (f) There is a community of interest in ensuring that the combined assets and
27 available insurance of the Defendant is sufficient to adequately
28 compensate Class Members for the injuries sustained;

(g) Without class certification, the prosecution of separate actions by individual members of the Class would create a risk of:

(1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish an incompatible standard of conduct for Defendant; and/or

(2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, a responsible Defendant; and

(h) Defendant has acted or refused to act on grounds generally applicable to the Plaintiff Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

FIRST CAUSE OF ACTION

Failure to Pay All Wages Due

(Against Defendant, DOES 1 through 50, and each of them)

38. Plaintiff and Class Members reallege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

39. Labor Code section 510, subdivision (a) states in pertinent part: “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee.”

40. Labor Code section 1194, subdivision (a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including

1 interest thereon, reasonable attorney's fees, and costs of suit.”

2 41. Further, pursuant to Labor Code section 1197, payment of less than the minimum
3 wage fixed by the Labor Commission is unlawful.

4 42. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
5 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
6 IWC Wage Order(s).

7 43. Pursuant to the IWC Wage Order(s), Defendant is required to pay Plaintiff and
8 Class Members for all hours worked, meaning the time during which an employee is subject to
9 the control of an employer, including all the time the employee is suffered or permitted to work,
10 whether or not required to do so.

11 44. During the Class Period, Defendant, as a matter of established company policy and
12 procedure, required Plaintiff and Class Members to work off-the-clock by not compensating them
13 for time spent traveling in between job sites and locations. In addition, Defendant failed to pay
14 Plaintiff and Class Members for time spent after they had clocked out after their shifts had ended,
15 but were forced to complete paperwork.

16 45. Specifically, Defendant’s policy did not provide compensation for Plaintiff and
17 Class Members for driving to a job site for the first hour of their shift, unless Plaintiff and Class
18 Members went to Defendant’s shop first and left from that location.

19 46. Because Defendant required Plaintiff and Class Members to remain under
20 Defendant’s control without paying therefore, this resulted in them earning less than the legal
21 minimum wage in the State of California.

22 47. Defendant’s pattern, practice and uniform administration of corporate policy
23 regarding illegal employee compensation as described herein is unlawful and creates an
24 entitlement, pursuant to Labor Code section 218, to recovery by Plaintiff and Class Members, in
25 a civil action, of the unpaid balance of the full amount of wages owing, calculated at the
26 appropriate rate.

27 48. Further, Defendant’s pattern and practice in uniform administration of corporate
28 policy regarding Defendant’s failure to pay the legal minimum wage to Class Members as

described herein is unlawful and creates entitlement, pursuant to Labor Code section 1194(a), to recovery by Plaintiff and Class Members, in a civil action, for the unpaid balance of the full amount of the unpaid minimum wages owed, calculated as the difference between the straight time compensation paid and the applicable minimum wage (and/or the full amount of unpaid overtime compensation, which includes any unpaid straight time and unpaid overtime premium for overtime hours worked), including interest thereon.

49. Defendant willfully violated the Labor Code by failing to pay Plaintiff and Plaintiff Class all wages including both minimum wage and overtime. Defendant has regularly violated the Labor Code with respect to meeting the requirements of paying wages earned, including, overtime, double-time and remuneration when calculating the employees' regular rate of pay, as herein before alleged.

50. Pursuant to Labor Code sections 218.6 and 1194(a) and Civil Code section 3287, Plaintiff and Class Members seek recovery of pre-judgment interest on all amounts recovered herein.

51. Additionally, Plaintiff and Plaintiff Class members is entitled to attorneys' fees, costs, pursuant to Labor Code section 1194 and prejudgment interest.

SECOND CAUSE OF ACTION

Failure to Provide Meal Periods or Compensation in Lieu Thereof

(Against Defendant, DOES 1 through 50, and each of them)

52. Plaintiff and Class Members reallege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

53. Labor Code sections 226.7 and 512 provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes within the fifth (5th) hour of work, or employ any person for a work period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30) minutes.

54. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one

1 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
2 period is not provided in accordance with this section.

3 55. Defendant failed to schedule Plaintiff and Class Members in a manner as to
4 reasonably ensure that Plaintiff and Class Members could take such meal periods within the
5 statutory timeframe. As a result, Plaintiff and Plaintiff Class were often forced to forego their
6 meal periods, work during their meal periods and/or take meal periods after the fifth (5th) hour of
7 their shifts. In so doing, Defendant has intentionally and improperly denied meal periods to
8 Plaintiff and Class Members in violation of Labor Code sections 226.7 and 512, and other
9 regulations and statutes.

10 56. Specifically, Defendant required Plaintiff and Class members to push their meal
11 periods back and continue working through their meal periods whenever they were in the middle
12 of working on a job. However, when this occurred, Plaintiff and Class Members were forced to
13 write down that they had been provided with a timely meal period that day or they would be
14 subject to discipline.

15 57. At all times relevant hereto, Plaintiff and Plaintiff Class have worked more than
16 five (5) hours in a workday.

17 58. At all times relevant hereto, Defendant failed to schedule Plaintiff and Class
18 Members in a manner so as to reasonably provide work-free meal periods in accordance with
19 Labor Code sections 226.7 and 512.

20 59. By virtue of Defendant's failure to schedule Plaintiff and Class Members in such
21 a way as to provide a timely and/or work free meal period to Plaintiff and Class Members, Plaintiff
22 and Class Members have suffered, and will continue to suffer, damages in an amount which is
23 presently unknown, but which exceed the jurisdictional limits of this Court and which will be
24 ascertained according to proof at trial.

25 60. Plaintiff individually, and on behalf of the Plaintiff Class, requests recovery of
26 meal period compensation pursuant to Labor Code section 226.7, which they are owed beginning
27 four (4) years prior to filing this Complaint as well as the assessment of any statutory penalties
28 against these Defendant, and each of them, in a sum as provided by the Labor Code and/or other

1 statutes.

2 **THIRD CAUSE OF ACTION**

3 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**

4 **(Against Defendant, DOES 1 through 50, and each of them)**

5 61. Plaintiff and Class Members reallege and incorporate by reference all preceding
6 paragraphs of this complaint as though fully set forth herein.

7 62. The IWC Wage Orders and Labor Code section 226.7 provides that employers
8 must authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest
9 time per four (4) work hours or major fraction thereof.

10 63. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
11 provide an employee rest periods in accordance with this section, the employer shall pay the
12 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
13 that the rest period is not provided.

14 64. During the Class Period, Defendant did not provide Plaintiff and Class Members
15 with a ten-minute rest period for every four (4) work hours or major fraction thereof. Therefore,
16 Plaintiff and Class Members were not provided lawful rest periods.

17 65. Defendants, and each of them, failed and/or refused to implement a relief system
18 by which Plaintiff and Class Members could receive rest periods and/or work free rest periods.
19 By and through its actions, Defendant intentionally and improperly denied rest periods to Plaintiff
20 and Class Members in violation of Labor Code sections 226.7 and 512.

21 66. In fact, Defendant's policy was to not provide Plaintiff and Class Members with
22 rest breaks throughout the Class Period and/or to work through their rest breaks because they
23 were in the middle of doing a job.

24 67. At all times relevant hereto, Plaintiff and Plaintiff Class have worked more than
25 four (4) hours in a workday.

26 68. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
27 and Class Members, Plaintiff and Class Members have suffered, and will continue to suffer,
28 damages, in amounts which are presently unknown, but which exceed the jurisdictional limits of

1 this Court and which will be ascertained according to proof at trial.

2 69. Plaintiff, individually and on behalf of employees similarly situated, requests
3 recovery of rest period compensation pursuant to Labor Code section 226.7 for the four (4) years
4 prior to filing this Complaint, as well as the assessment of any statutory penalties against
5 Defendant, and each of them, in a sum as provided by the Labor Code and/or any other statute.

6 **FOURTH CAUSE OF ACTION**

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

8 **(Against Defendant, DOES 1 through 50, and each of them)**

9 70. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding
10 paragraphs of this complaint as though fully set forth herein.

11 71. Labor Code section 1174, subdivision (d) requires an employer to keep at a central
12 location in California, or at the plant or establishment at which the employee is employed, payroll
13 records showing the hours worked daily by, and the wages paid to, each employee.

14 72. Labor Code section 226, subdivision (a) requires an employer to provide
15 employees—either as a detachable part of the check, draft, or voucher paying the employee’s
16 wages, or separately when wages are paid by personal check or cash—an accurate itemized wage
17 statement in writing showing

18 (1) gross wages earned, (2) total hours worked by the employee . . . , (4) all
19 deductions . . . , (5) net wages, (6) the inclusive dates of the period for which
20 the employee is paid, (7) the name of the employee and only the last four
21 digits of his or her social security number or an employee identification
22 number other than a social security number, (8) the name and address of the
23 legal entity that is the employer . . . , and (9) all applicable hourly rates in
24 effect during the pay period and corresponding number of hours worked at
25 each hourly rate by the employee

26 73. Moreover, the IWC Wage Orders require that every employer shall keep accurate
27 information with respect to each employee, including time records showing when each employee
28 begins and ends each work period, the total daily hours worked by each employee and the total

1 hours worked in each payroll period, and applicable rates of pay.

2 74. Plaintiff is informed and believes that Defendant willfully and intentionally failed
3 to make and/or keep records which accurately reflect the hours worked by Plaintiff and Plaintiff
4 Class. Specifically, Plaintiff believes that Defendant's records do not accurately reflect when
5 Plaintiff and Plaintiff Class worked during their meal and rest periods and/or took untimely meal
6 periods. Similarly, Plaintiff believes that Defendant's records do not accurately reflect the
7 payment of all overtime hours paid at the correct overtime rate.

8 75. Labor Code section 226, subdivision (e) provides that if an employer knowingly
9 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,
10 the total hours worked by the employee and the applicable hourly overtime rates, causing the
11 employee injury, then the employee is entitled to recover the greater of all actual damages or
12 fifty dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each
13 subsequent violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes
14 that Defendant willfully failed to make or keep accurate records for Plaintiff and Plaintiff Class.

15 76. Plaintiff is informed and believes that Defendant's failure to keep accurate payroll
16 records, as described above, violated Labor Code section 1174, subdivision (d) and section 226,
17 subdivision (a), and the applicable IWC Wage Order(s). Pursuant to Labor Code section 2699,
18 subdivision (f)(2), Plaintiff and the Plaintiff Class are entitled to penalties of \$100.00 and for the
19 initial violation and \$200.00 for each subsequent violation for every pay period during which
20 these records and information were not kept by Defendant.

21 77. Plaintiff is informed and believes that Defendant's failure to keep and maintain
22 accurate records and information, as described above, was willful, and Plaintiff and the Plaintiff
23 Class are entitled to statutory penalties pursuant to Labor Code section 1174.5.

24 **FIFTH CAUSE OF ACTION**

25 **Failure to Pay Wages upon Termination of Employment**

26 **(Against Defendant, DOES 1 through 50, and each of them)**

27 78. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding
28 paragraphs of this complaint as though fully set forth herein.

1 79. Plaintiff's employment with Defendant ended on or about September 13, 2019.
2 Plaintiff and certain Plaintiff Class who ended their employment with Defendant during the Class
3 Period, were entitled to be promptly paid for all hours worked, including lawful regular time
4 compensation, overtime compensation, double-time compensation, and other premiums, as
5 required by Labor Code sections 201 through 203. Plaintiff is also entitled to meal period and
6 rest period premium pay in accordance with Labor Code sections 226 and 226.7.

7 80. Plaintiff and Plaintiff Class were not compensated for their missed, late and/or
8 interrupted meal periods and/or rest periods, and were not paid proper regular time compensation,
9 overtime compensation or double-time compensation in accordance with law.

10 81. To date, Plaintiff and Class Members who ended their employment with
11 Defendant during the Class Period have not been compensated for all hours worked.

12 82. Plaintiff and the affected Class Members seek the payment of penalties pursuant
13 to Labor Code section 203, according to proof.

14 83. Plaintiff is also entitled to attorneys' fees and costs, pursuant to Labor Code section
15 1194, and prejudgment interest.

16 **SIXTH CAUSE OF ACTION**

17 **Indemnification for Expenditures or Losses in Discharge of Duties**

18 **(Labor Code Section 2802)**

19 **(Against Defendant, DOES 1 through 50, and each of them)**

20 84. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding
21 paragraphs of this complaint as though fully set forth herein.

22 85. Defendant failed to indemnify Plaintiff and Class Members for all necessary
23 expenditures or losses incurred by Plaintiff and Class Members in direct consequence of the
24 discharge of their duties. Specifically, Defendant failed to indemnify Plaintiff and Class Members
25 for expenditures they incurred on their behalf, including without limitation, mileage and gas for
26 the use of their personal vehicles during the Class Period, in direct consequence of the discharge
27 of their duties to Defendant.

28 ///

86. Defendant has not reimbursed Plaintiff and Plaintiff Class for all expenditures. Plaintiff and Plaintiff Class are therefore entitled to be paid damages, attorney's fees, costs, interest pursuant to Labor Code section 2802, subdivisions (b) and (c), as well as all statutory penalties, against Defendant in accordance with Labor Code section 2802, subdivision (d).

SEVENTH CAUSE OF ACTION

Unfair Business Practices

(Against Defendant, DOES 1 through 50, and each of them)

87. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

88. Business and Professions Code section 17200 et seq. (also referred to herein as the “Unfair Business Practices Act” or “Unfair Competition Law”) prohibits unfair competition in the form of any unlawful, unfair or fraudulent business act or practice.

89. Business and Professions Code section 17204 allows “a person who has suffered injury in fact and has lost money or property as a result of the unfair competition” to prosecute a civil action for violation of the Unfair Competition Law (“UCL”).

90. Labor Code section 90.5, subdivision (a) states that it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

91. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4) years prior to the filing of this lawsuit, Defendant has committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business practices and acts described in this Complaint including but not limited to violations of Labor Code sections 201-204, 226, 226.7, 512, 1174, 1197, and 1198, as well as other statutes.

92. The violations of these laws and regulations, as well as of the fundamental California public policies protecting workers, serve as unlawful predicate acts and practices for purposes of Business and Professions Code section 17200 et seq.

1 93. The acts and practices described above constitute unfair, unlawful and fraudulent
2 business practices, and unfair competition, within the meaning of Business and Professions Code
3 section 17200 et seq. Among other things, the acts and practices have forced Plaintiff and other
4 similarly situated employees to labor for many consecutive hours without receiving the meal and
5 rest periods and overtime compensation to which they are entitled by law, while enabling
6 Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

7 94. As a result of Defendant's acts, Plaintiff and Class Members have suffered injury
8 in fact in being denied their statutorily entitled meal and rest periods and full compensation for
9 hours worked.

10 95. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
11 and Class Members have suffered lost wages in an amount to be proven at trial.

12 96. Business and Professions Code section 17203 provides that a court may make such
13 orders or judgments as may be necessary to prevent the use or employment by any person of any
14 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
15 prevent Defendant from repeating its unlawful, unfair and fraudulent business acts and business
16 practices alleged above.

17 97. Business and Professions Code section 17203 provides that the Court may restore
18 to any person in interest any money or property that may have been acquired by means of such
19 unfair competition. Plaintiff and Plaintiff Class are entitled to restitution pursuant to Business
20 and Professions Code section 17203 for all wages and payments unlawfully withheld from
21 employees, including the fair value of the meal and rest periods taken away from them during the
22 four-year period prior to the filing of this Complaint, as well as for all expenses or losses incurred
23 by Plaintiff and Plaintiff Class in direct consequence of the discharge of his or her duties, or of
24 his or her obedience to the directions of the employer.

25 98. Business and Professions Code section 17202 provides, "Notwithstanding section
26 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
27 forfeiture, or penal law in a case of unfair competition." Plaintiff and Plaintiff Class are entitled
28 to enforce all applicable penalty provisions of the Labor Code pursuant to Business and

Professions Code section 17202.

99. Plaintiff's success in this action will enforce important rights affecting public interest, and in that regard, Plaintiff sues on behalf of the general public, as well as himself and other similarly situated employees. Plaintiff and Class Members seek and are entitled to restitution, civil penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

100. Plaintiff herein takes upon himself enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action. The action is seeking to vindicate a public right, and it would be against the interests of justice to penalize Plaintiff by forcing him to pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil Procedure section 1021.5 and otherwise.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure section 382;
2. The Court appoint Plaintiff as Class Representative;
3. The Court appoint Mahoney Law Group, APC as class counsel;
4. For compensatory and statutory damages;
5. For restitution of all monies due to Plaintiff and Plaintiff Class from the unlawful/unfair business practices of Defendant;
6. For injunctive relief;
7. For statutory and civil penalties according to proof;
8. For reasonable attorneys' fees and costs pursuant to Labor Code sections 226(e), 218.5 and 1194, Code of Civil Procedure section 1021.5 and/or other applicable law; and
9. That the Court award such other and further relief as this Court may deem appropriate.

1 Dated: December 17, 2020

MAHONEY LAW GROUP, APC

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5 _____
6 Kevin Mahoney
7 Atoy H. Wilson
8 Attorneys for Plaintiff JEREMY KIMBALL, as an
9 individual and on behalf of all employees similarly
10 situated
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff JEREMY KIMBALL hereby demands a jury trial on all issues so triable.

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4 Dated: December 17, 2020

5 **MAHONEY LAW GROUP, APC**

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7 _____
8 Kevin Mahoney
9 Atoy H. Wilson
10 Attorneys for Plaintiff JEREMY KIMBALL, as an
11 individual and on behalf of all employees similarly
12 situated
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