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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ELIDETH CARBAJAL, an individual, on
behalf of Herself and on behalf of other
Aggrieved Employees and the State of
California,

Plaintiff,

vs.

KEYLEX, INC. dba KEYES LEXUS, a
California Corporation (erroneously sued as
KEYES MOTORS, INC. dba KEYES LEXUS);
HOWARD KEYES, an individual previously
named as fictitious DOE 1; and DOES 2-50,
Inclusive,

Defendant.

Case No: 20STCV49714

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF THE
PARTIES' JOINT STIPULATION FOR
ORDER APPROVING SETTLEMENT
PURSUANT TO PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LAB.
CODE § 2698 ET SEQ.)**

Judge: Hon. Lia Martin
Dept: 16

1 I, JEAN-CLAUDE LAPUYADE, declare as follows:

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

6 2. This declaration is being submitted in support of the Joint Stipulation for Order
7 Approving Settlement Pursuant to Private Attorneys General Act of 204 (Cal. Lab. Code § 2698 et seq.)
8 filed by Plaintiff and Defendant Keylex, Inc. dba Keyes Lexus (“Defendant”).

9 3. A true and correct copy of the fully executed PAGA Settlement Agreement
10 (“Agreement”) is attached hereto as Exhibit #1.

11 4. A true and correct copy of Plaintiff’s December 14, 2020 Notice of Violations filed with
12 the Labor and Workforce Development Agency (“PAGA Notice”) is attached hereto as Exhibit #2.

13 5. A true and correct copy of Plaintiff’s February 23, 2021, Amended Notice of Violations
14 filed with the Labor and Workforce Development Agency (“PAGA Notice”) is attached hereto as
15 Exhibit #3.

16 6. A true and correct copy of the proof of filing with the LWDA of the Joint Stipulation
17 of PAGA Settlement, is attached hereto as Exhibit #4. Included with the Joint Stipulation is
18 a copy of the Agreement.

19 7. A true and correct copy of the JCL Law Firm, APC, “Time and Billing Journal” as of
20 August 30, 2024, is attached hereto as Exhibit #5.

21 8. A true and correct copy of the JCL Law Firm, APC, “Transaction Summary” as of August
22 30, 2024, is attached hereto as Exhibit #6.

23 9. A true and correct copy of the JCL Law Firm, APC, Firm Resume is attached hereto as
24 Exhibit #7.

25 I. INTRODUCTION

26 10. An objective evaluation of the proposed settlement confirms that the relief negotiated on
27 behalf of the Aggrieved Employees and the LWDA is fair, reasonable, and valuable. The Settlement is
28 a product of informed, adversarial, and non-collusive and mediated negotiations between experienced

counsel. As discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval. Accordingly, Plaintiff and PAGA Counsel respectfully request this Court grant approval of the Agreement. PAGA Counsel's Qualifications are set forth in the Firm Resume attached hereto as Exhibit #7.

II. PROCEDURAL AND FACTUAL BACKGROUND

A. Plaintiff's Exhaustion of Administrative Remedies Under PAGA And Civil Action Against Defendant

1. On December 14, 2020, Plaintiff, on behalf of herself and on behalf of other Aggrieved Employees, served Defendant and the LWDA with a Notice of Violations ("PAGA Notice") and draft complaint memorializing claims against Defendant for alleged violations of the California Labor Code, including causes of action for failure to provide compliant meal and rest periods; failure to pay all minimum, regular, and overtime wages; failure to reimburse employees for required business expenses, failure to provide accurate itemized wage statements; and failure to timely pay wages when due (LWDA Case No. LWDA-CM-815337-20).

2. The 65-day "waiting period" on Plaintiff's right to file a civil action under PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff that they intended to investigate the claims in the PAGA Notice. To date, the LWDA still has not advised Plaintiff of any intent to take action with respect to the claims in the PAGA Notice.

3. On December 30, 2020, Plaintiff filed a complaint alleging causes of action against Defendant for (1) unfair competition; (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to provide required meal periods; (5) failure to provide required rest periods; (6) failure to reimburse employees for required expenses; (7) failure to provide accurate itemized statements; and (8) failure to timely pay wages when due.

4. On March 11, 2021, Plaintiff dismissed her individual claims and class claims against Defendant without prejudice, and filed a First Amended Complaint which asserted a single cause of action for violations of the PAGA. On April 19, 2021, Plaintiff filed a Second Amended Complaint, which corrected an error in the First Amended Complaint. The Second Amended Complaint is the operative complaint in the Action (the "Operative Complaint.").

1 5. On February 22, 2022, the Parties engaged in a full-day mediation with Kelly A. Knight,
2 Esq., an experienced mediator of wage and hour representative actions. In advance of the with the
3 mediation, Plaintiff obtained, through informal discovery, a sample of time and pay records from the
4 Aggrieve Employees. Defendant provided Plaintiff with sufficient information to properly evaluate
5 Defendant’s potential liability exposure. Among the data and documents Defendant produced included,
6 but was not limited to, the total number of Aggrieved Employees, pay periods, and a sample of time
7 and payroll data.

8 6. The Parties were unable to reach a settlement at mediation, and continued to litigate this
9 Action following the unsuccessful mediation. The Parties subsequently engaged in settlement
10 negotiations, however, which resulted in a settlement of Plaintiff’s PAGA claims and was memorialized
11 in the form of a Memorandum of Understanding (“MOU”). After reaching an agreement in the
12 principle, the Parties drafted and negotiated a long-form settlement which is attached to his declaration
13 as Exhibit 1. The Settlement was negotiated in light of all known facts and circumstances and the
14 uncertainty associated with litigation – including the risk of Plaintiff not being able to maintain
15 representative claims and establishing manageability, the difficulty of proving Plaintiff’s claims in a
16 manageable trial, the merits of Defendant’s potential defenses, and the significant delay and potential
17 appellate issues inherent to litigation – and was reached after extensive arm’s length negotiations.

18 7. The Settlement is intended to fully and finally resolve the Released PAGA Claims
19 asserted by Plaintiff on behalf of herself, the LWDA, and the State of California. This is only a
20 Settlement of the PAGA claims for civil penalties and is not a class settlement and does not release the
21 individual claims, if any, of the Aggrieved Employees. This Settlement does not release any claim that
22 is not a PAGA claim.¹ Nor does this Settlement waive Defendant’s right to assert *res judicata* or other
23 available defense to any asserted claim or lawsuit.

24 8. Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
25 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion
26 for settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiff will
27
28

¹ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th 175 at 196: “Nonparty employees are bound by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties.”

submit to the LWDA a copy of the Court’s judgment and order approving the Settlement Agreement within ten (10) days after entry of judgment or order.

III. TERMS OF THE PAGA SETTLEMENT

9. The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2). The Settlement Agreement negotiated by the Parties provides for a Gross Settlement Amount payment in the amount of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) to resolve the PAGA claims. From the Gross Settlement Amount, there is a deduction of a PAGA Counsel Award in the amount of \$48,333.34 comprised of one-third of the Gross Settlement Amount (estimated to be approximately \$33,333.34), reimbursement of incurred litigation expenses in an amount not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00), and Claims Administration Costs which will not exceed Five Thousand Three Hundred Dollars and Zero Cents (\$5,300.00). See Declaration of Claims Administrator at ¶7; Agreement generally at §§ 3.1; 3.2.1; 3.2.2. After these deductions, the amount remaining is the “PAGA Penalties,” which is estimated to be \$41,366.66.

IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT

10. The Gross Settlement Amount of \$100,000.00 is fair and reasonable and, therefore, should be approved. Here, *without stacking* the PAGA penalties, Defendant’s liability exposure is estimated at approximately \$511,704.65 in PAGA Penalties. Plaintiff estimated Defendant’s exposure as follows:

Claim	Penalty Amount ²	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
<i>Meal Period Violations</i> Cal. Labor Code §§	\$50 ³	912	19% of PAGA Pay Periods	\$45,615.23

² In *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144, the court decided that “[u]ntil the employer has been notified that it is violating a Labor Code provision ... the employer cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.” Therefore, Plaintiff used only penalties for initial violations.

³ The \$50 penalty rate was used for a number of reasons in this instance. First, Defendant argued that increased civil penalties for subsequent violations do not apply unless the Plaintiff can present evidence that the Labor Commission or a court notified the employer that it was in violation of the Labor Code. *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144 citing *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 [“Until the employer has been notified that it is violating a Labor Code provision ... the employer cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to penalties.”].) Separately, Defendant also argued that courts have considerable discretion to reduce the penalty awards under PAGA. See, e.g. *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (reducing the maximum PAGA

226.7 and 512				
Rest Period Violations Cal. Labor Code §§ 226.7 and 512	\$50	912	19% of PAGA Pay Periods	\$45,615.23
Unpaid Wages Violations Cal. Labor Code §§ 201, 202, 203, 204, 246, 1194, 1197, 1997.1, 1198 and 558	\$100	1,517	33% of PAGA Pay Periods	\$157,079.20
Wage Statement Violations Cal. Labor Code §§ 226 and 226.2	\$100	1,437	30% of PAGA Pay Periods	\$143,670.00
Business Reimbursement Violations Cal. Labor Code § 2802	\$100	100	25% of PAGA Pay Periods	\$119,725.00

11. Plaintiff alleges that Defendant failed to pay all wages due to Plaintiff and the Aggrieved Employees under two separate theories. First, Plaintiff alleges he and other Aggrieved Employees worked off-the-clock during meal breaks to assist customers, respond to work-related communications. Second, Plaintiff alleges that Defendant failed to include certain non-discretionary bonuses and commissions when calculating the regular rate of pay when paying overtime wages. Specifically, Plaintiff alleges Defendant paid Aggrieved Employees non-discretionary bonuses and commissions which were not properly calculated into the regular rate of pay for purposes of overtime. As a result of these miscalculations, Plaintiff and other Aggrieved Employees were underpaid their overtime wages during pay periods in which they received non-discretionary incentive compensation and received overtime wages.

12. Defendant denies any practice of failing to pay employees for work performed off-the-clock and further argued that to the extent any employee was performing off-the-clock work during meal breaks, they were not instructed to do so, nor was Defendant aware that any work was being

penalty amount by 90%, at \$5 per pay period). Accordingly, it is unlikely that Plaintiff would recover full penalty amounts even if he prevailed in establishing the underlying Labor Code violations. Pursuant to California Labor Code section 558(a)(1), an employer is subject to a penalty of \$50 for violations of a Labor Code section regulating hours and days of work, including meal period and rest period violations. Thus, because section 558(a)(1) specifically provides for a civil penalty, Plaintiff used a \$50 penalty per violation for the meal and rest break claims. JCL Dec., ¶ 28.

1 performed off-the-clock. Taking into account Defendant's defenses, Plaintiff estimates Defendant's
2 exposure for this claim to be approximately \$157,079.20.

3 13. Plaintiff also alleges that Defendant failed to provide compliant meal periods pursuant to
4 two separate theories. First, Plaintiff's expert found that recorded meal periods were second meal
5 periods were missed in nearly 80% of shifts between 10 and 12 hours, and in 57% of shifts greater than
6 12 hours. Second, Plaintiff alleges that a number of other meal periods that appear compliant on paper
7 were actually non-compliant, as Plaintiff and other Aggrieved Employees were performing work during
8 what was supposed to be their meal period. Defendant denies these allegations, again contending that
9 the Aggrieved Employees had control over their own schedules, had significant discretion to take their
10 own meal breaks, and were not instructed or required to perform work during breaks or to miss breaks.
11 Taking into account Defendant's defenses, Plaintiff estimates Defendant's exposure for this claim to be
12 approximately \$45,615.23.

13 14. Plaintiff also alleged that Defendant failed to provide compliant rest periods.
14 Specifically, Plaintiff alleges that he and the Aggrieved Employees were not permitted to leave the
15 premises during rest periods, should they need to assist customers or perform other work-related tasks
16 during these "breaks". Defendant denied these allegations, arguing that it maintains compliant rest
17 period policies and practices, and that the Aggrieve Employees had substantial control over their own
18 schedules to take rest breaks as needed, and were free to leave the premises. Plaintiff further argued
19 that Defendant failed to separately compensate the Aggrieved Employees for paid rest breaks at their
20 regular rate of pay, pursuant to the holding in *Vaquero v. Stoneledge Furniture LLC*, 9 Cal. App. 5th
21 98,111, (Ct. App. 2017), as modified (Mar. 20, 2017).

22 15. Defendant maintained that Plaintiff's rest break claim would have mainly relied on the
23 testimony of Aggrieved Employees, making it a riskier claim. Establishing liability likely would have
24 entailed competing testimony stating either rest breaks were taken, or rest breaks were voluntarily
25 waived. See, e.g., *Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11
26 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have
27 an illegal, written rest break policy is insufficient for this Court to find that common issues
28 predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL

1 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not generate
2 uniform practices”). Taking into account Defendant’s defenses, Plaintiff estimates Defendant’s
3 exposure for this claim to be approximately \$45,615.23.

4 16. Plaintiff further alleged that the wage statements furnished to Plaintiff and the other
5 Aggrieved Employees that contained a facial violation of Labor Code 226(a)(2). Specifically, Plaintiff
6 alleged that the wage statements frequently included multiple earnings categories but failed to include
7 the total hours worked. Defendant argued that wage statements furnished were compliant under Labor
8 Code Section 226(a)(2) because they contained sufficient information for the Aggrieved Employees to
9 determine the total hours worked. Defendant also argued that Plaintiff could not prove that the absence
10 of a field indicating the total hours worked was knowing or intentional, thus could not recover civil
11 penalties for such alleged violation under the PAGA. Taking into account Defendant’s defenses,
12 Plaintiff estimated Defendant’s exposure for this claim to be \$143,670.00.

13 17. Lastly, Plaintiff argued that she and the Aggrieved Employees were required to use
14 personal electronic devices to communicate with managers and to receive work-related calls, emails
15 and text messages, sometimes on their days off. Plaintiff regularly used her cellphone to send and
16 receive work-related emails and text messages. Despite being required to use their personal cell phones
17 to carry out their duties, Defendant did not reimburse for such use. Plaintiff estimated Defendant’s
18 exposure for this claim to be \$119,725.00.

19 18. In light of the above, the Gross Settlement Amount is approximately 19.5% of
20 Defendant’s potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely
21 recovery of PAGA penalties through continued litigation. Defendant’s maximum exposure to PAGA
22 penalties is not a realistic outcome of the litigation because it fails to account for the risks of continued
23 litigation including, but not limited to, Defendant’s defenses. *See, Zayerz v. Kiewit Infrastructure West*,
24 2018 U.S. Dist. LEXIS 14918, *14 (C.D. Cal. January 18, 2018). For instance, Defendant argued that
25 it can only be assessed civil penalties for actual violations of the Labor Code. *See* Lab. Code § 2699(f)(2).
26 In other words, to recover any civil penalties, Plaintiff would be required to prove the underlying Labor
27 Code violations. (*Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal.
28 2011) [“Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals

1 whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant.”].) To do
2 this, Plaintiff would need to prove each Aggrieved Employee was subject to the alleged Labor Code
3 violation, which would be difficult to do, since Defendant deny any liability or wrongdoing of any kind
4 associated with the claims alleged in this action.

5 1. Thus, Defendant contended that Plaintiff would be required to “prove Labor Code
6 violations with respect to each and every individual on whose behalf Plaintiff seek to recover civil
7 penalties under PAGA.” *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar.
8 2, 2009). When “determining whether the employer committed Labor Code violations with respect to
9 each employee” is impractical, the PAGA action can be dismissed. *Wesson v. Staples the Off.*
10 *Superstore*, 2021 WL 4099059, *11 (Cal. Ct. App. Sept. 9, 2021).

11 2. Finally, the maximum penalty figure does not consider that Courts have complete
12 discretion to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if,
13 based on the facts and circumstances of the particular case, to do otherwise would result in an award
14 that is unjust, arbitrary and oppressive, or confiscatory.” (Cal. Lab. Code § 2699(e)(2)). In fact, Courts
15 routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v.*
16 *Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to \$5 per pay period;
17 “Although the trial court may have disagreed with Starbucks regarding the issue of liability, it clearly
18 took the circumstances proffered by Starbucks into consideration when it imposed the penalty ... only
19 \$5 per initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal App 5th 778, 788 (2018), review
20 granted on other grounds (noting that the trial court “exercised its discretion to reduce the [PAGA]
21 penalties to 13 percent of the full amount [requested, because] [o]n average, plaintiffs were deprived of
22 13 percent of the 30-minute meal period”); *Fleming v. Covidien, Inc.*, 2011 WL 7563047, *4 (C.D. Cal.
23 2011) (exercising discretion to reduce the maximum amount of PAGA civil penalties for plaintiffs’
24 section 226 claims from \$2,800,000 to \$500,000 because the employees suffered no injuries as a result
25 of the erroneous wage statements and made no complaints about the errors or omissions in the wage
26 statements, thus reducing the maximum penalty by 82%); *see also, Gola v. University of San Francisco*,
27 *90 Cal. App. 5th 548 (2023), as modified (May 9, 2023), reh’g denied (May 15, 2023), review denied*
28 *(July 12, 2023), and disapproved of by Naranjo v. Spectrum Sec. Servs., Inc.*, *15 Cal. 5th 1056, 547*

1 *P.3d 980 (2024)* (concluding after a full-blown bench trial that a penalty of 15% of the maximum PAGA
2 penalties was the appropriate penalty). The gross amount obtained by PAGA Counsel is reasonable in
3 light of Defendant's arguments.

4 3. Given Defendant's defenses to the claimed Labor Code violations at issue and the risks
5 and costs of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount
6 is fair and reasonable. This settlement was negotiated by experienced counsel at arm's length.

7 4. The LWDA has been provided with notice of this motion and the PAGA settlement, and
8 the decision of LWDA to accept the PAGA settlement and not oppose the motion should be given
9 considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and
10 protect its own rights.

11 5. Although PAGA requires that a court approve the proposed PAGA settlement, Labor
12 Code § 2699(1) does not require that a court approve any other elements of the proposed settlement.
13 Because there are no class allegations for which Plaintiff seeks approval, the approval provisions
14 applicable to class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the Court
15 only needs to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as
16 explained herein, the settlement terms for attorneys' fees and costs are reasonable.

17 6. Separate from the PAGA settlement, Plaintiff entered into an individual settlement with
18 Defendant in which she granted Defendant a broad release of all claims, including arising out of her
19 employment with Defendant and a release of all known and unknown claims against Defendant. This
20 individual settlement was separately negotiated from the settlement of the PAGA Action and is not
21 being paid from the gross PAGA Settlement Amount. Plaintiff will file this settlement agreement under
22 seal for the Court to review in camera, at the Court's request.

23 **V. THE PAGA COUNSEL FEES AND EXPENSES PAYMENT ARE FAIR AND**
24 **REASONABLE**

25 7. PAGA Counsel seeks approval of the PAGA Counsel Award, comprised of attorneys'
26 fees in the amount of \$33,333.34 (one-third of the Gross Settlement Amount) and reimbursement of
27 litigation costs not to exceed \$15,000.⁴ PAGA does not have any requirements for reviewing attorneys'

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⁴ As detailed *infra*, at the time of filing this motion, Plaintiff's Counsel incurred \$\$10,605.84 litigating this matter with additional costs anticipated.

1 fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this Settlement is a matter
2 of contract for a contingent representation. Nevertheless, should this Court review the requested
3 attorneys' fees, the requested fees and costs are reasonable for experience wage and hour counsel.

4 8. The requested PAGA Counsel Award of \$48,333.34, comprised of \$33,333.34 for
5 attorneys' fees and reimbursement of litigation expenses of up to \$15,000 is fair, reasonable, and
6 justified by the result achieved.

7 9. PAGA Counsel negotiated a recovery of One Hundred Thousand Dollars and Zero Cents
8 (\$100,000.00), and this result justifies the requested fees equal to one third of this recovery. This
9 percentage is within the standard contingent recovery percentage of one-third, and this percentage is
10 what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480,
11 504, (2016). At the time this case was brought, the result was far from certain. Defendant's defenses to
12 the merits of the case created difficulties with proof and complex legal issues for PAGA Counsel to
13 overcome. Here, several defenses asserted by Defendant present serious threats to the claims of Plaintiff
14 and the Aggrieved Employees. Defendant asserted that its employment practices complied with all
15 applicable labor laws. If successful, Defendant's factual and legal defenses would eliminate *any*
16 *recovery* to the Aggrieved Employees. While Plaintiff believes that these defenses could be overcome,
17 Defendant maintains that these defenses have merit and therefore present a serious risk to recovery. The
18 Settlement was possible because, in PAGA Counsels' eyes, PAGA Counsel was able to persuade
19 Defendant that there was an appreciable risk that Plaintiff would prevail on the factual and legal issues
20 underlying liability and overcome difficulties in proof as to monetary relief.

21 10. Plaintiff is represented by competent and experienced counsel to pursue his claims. I
22 establish the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing
23 aggrieved employees and consumers throughout California in wage and hour class actions. The Firm
24 currently consists of myself, Jean-Claude Lapuyade, Esq. (Partner/Owner), Sydney Castillo-Johnson,
25 Esq. (Associate Attorney), Monnett De La Torre, Esq. (Associate Attorney), Perssia P. Razma
26 (Associate Attorney), Andrea Amaya (Associate Attorney), Tesla Stone (Senior Paralegal and Office
27 Manager), and Jennifer Heming (Paralegal).

1 11. I am qualified to represent the Plaintiff, the State of California, and the Aggrieved
2 Employees. I have extensive experience with wage and hour class and representative actions litigation
3 like this matter, and employment matters in general. Additionally, I have extensive complex mass tort
4 litigation experience and complex construction product liability experience. I can, will, and have
5 adequately represented the interests of the Plaintiff, the State of California, and the Aggrieved
6 Employees throughout this action.

7 12. I have represented consumers and employees in California class actions, and complex
8 multi-party product liability actions exclusively for more than 17 years. I have been in practice as a
9 plaintiffs' civil litigation attorney since April 2007.

10 13. My credentials are reflected in the JCL Law Firm, APC, Firm Resume, a true and correct
11 copy of which is attached hereto as Exhibit #7. Some of the major cases the Firm has undertaken are
12 also set forth in Exhibit #7.

13 14. The JCL Law Firm's rates are comparable to those judicially approved for other
14 plaintiff's firms, such as Baron & Budd (rates ranging from \$775 for the requested partner to \$390-
15 \$630 for non-partners), Western Comden Casselman & Essensten (rates ranging from \$670-\$750 for
16 partners and \$300-\$500 for associates), and Blood Hurst & Rearden (\$510-\$695 for partners). See
17 *Aarons v. BMW of North America*, No. 11-7667-PSG, 2014 U.S. Dist. LEXIS 118442, *40-41 (C.D.
18 Cal. Apr. 29, 2014). Other Southern California courts have approved hourly rates in the requested range.
19 *See e.g., Kearney v. Hyundai Motor Am.*, 2013 U.S. Dist. LEXIS 91636, *24 (C.D. Cal. June 28, 2013)
20 (approving hourly rates of \$650 -\$800 for senior attorneys in consumer class action); *Parkinson v.*
21 *Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010)(approving hourly rates between
22 \$445 and \$675); *Faigman v. AT&T Mobility, LLC*, 2011 U.S. Dist. LEXIS 15825, *2 (N.D. Cal. Feb.
23 15, 2011)(Approving hourly rates of \$650 an hour for partners and \$500 for associates); *Richard v.*
24 *Ameri-Force Mgmt. Servs., Inc.*, No 37-2008-00096019 (San Diego Superior Court, August 27,
25 2010)(\$695 to \$750 an hour for partners and \$495 for associates); *Barrera v. Gamestop*, No. CV 09-
26 1399 (C.D. Cal. Nov. 29, 2010)(\$700 for partners and \$475 for associates); *Anderson v. Nextel Retail*
27 *Stores, LLC*, No. CV 07-4480 (C.D. Cal. June 20, 2010)(\$655- \$750 for partners and \$300 – 515 for
28 associates); *Luquetta v. Regents of Cal.*, CGC-05-443007 (San Francisco Sup. Ct.) (approving 2012

1 partner rates between \$550 and \$850 per hour); and *Holoway v. Best Buy Co.*, C-05-5056-PJH
2 (MEJ)(N.D. Cal.)(approving 2011 partner rates between \$825 and \$700, and associates hourly rates
3 between \$355 and \$405 an hour).

4 15. Moreover, my billing rate has been approved multiple times within the last twelve months
5 by California Superior Court judges. (*See generally Repass v. The Scion Group, LLC*, Sacramento
6 Superior Court Case No. 34-2020-00285285 (August 23, 2023) Hon. Lauri A. Damrell approved a \$550
7 billing rate and appointed Jean Claude Lapuyade, Esq. of the JCL Law Firm, APC, as Class Counsel;
8 *Baray v. Curation Foods, Inc., et al.*, Santa Barbara Superior Court Case No. 21CV02834 (August 29,
9 2023) Hon. James F. Rigali approved a \$550 billing rate and appointed Jean Claude Lapuyade, Esq. of
10 the JCL Law Firm, APC, as Class Counsel; *Mendez v. Bondz, Inc., et al.*, San Joaquin Superior Court
11 Case No. STK-CV-UOE-2020-0007486 (September 14, 2023) Hon. George J. Abdallah, Jr. approved
12 a \$550 billing rate and appointed Jean Claude Lapuyade, Esq. of the JCL Law Firm, APC, as Class
13 Counsel; *Kneisly v. SR Machining, Inc., et al.*, Riverside Superior Court Case No. CVRI2201491
14 (October 5, 2023) Hon. Harold W. Hopp approved a \$550 billing rate and appointed Jean Claude
15 Lapuyade, Esq. of the JCL Law Firm, APC, as Class Counsel; *Jackson v. White Fir, LLC, et*
16 *al.*, Sacramento Superior Court Case No. 34-2021-00301656 (October 6, 2023) Hon. Lauri A. Damrell
17 approved a \$550 billing rate and appointed Jean Claude Lapuyade, Esq. of the JCL Law Firm, APC, as
18 Class Counsel; *DeSanctis v. Douglas Products and Packaging Company, LLC*, Contra Costa Superior
19 Court Case No. C21-01874 (October 11, 2023) Hon. Charles S. Treat approved a \$550 billing rate and
20 appointed Jean Claude Lapuyade, Esq. of the JCL Law Firm, APC, as Class Counsel; *Anderson v.*
21 *Barton Myers Associates, Inc., et al.*, Los Angeles Superior Court Case No. 21STCV43314 (October
22 12, 2023) Hon. Elihu M. Berl approved a \$550 billing rate and appointed Jean Claude Lapuyade, Esq.
23 of the JCL Law Firm, APC, as Class Counsel; *Trinh v. Precision Metal Products, Inc., et al.*, San Diego
24 Superior Court Case No. 37-2022-00000965-CU-OE-CTL (October 16, 2023) Hon. Matthew C.
25 Braner approved a \$550 billing rate and appointed Jean Claude Lapuyade, Esq. of the JCL Law Firm,
26 APC, as Class Counsel; *Ware v. Shake Shack Enterprises, LLC*, Alameda Superior Court Case No.
27 21CV002063 (October 19, 2023) Hon. Brad Seligman approved a \$550 billing rate and appointed Jean
28

Claude Lapuyade, Esq. of the JCL Law Firm, APC, as Class Counsel in a \$1,330,000 wage and hour class and PAGA action).

16. As of August 26, 2024, The JCL Law Firm, APC incurred a total lodestar of \$21,300.00 for 31 hours worked by attorneys and staff successfully litigating this matter. I have reviewed my firm's lodestar in this matter and believe the charges are reasonable and were reasonably necessary to the conduct of the case. Detailed Time and Billing Journals for the JCL Law Firm are attached hereto as Exhibit #5.

17. Additionally, the attorneys and staff at co-counsel the Zakay Law Group, APLC ("ZLG"), billed \$90,567.50 for 175 hours successfully litigating this action. A true and accurate copy of the ZLG time and billing entries is attached to the Declaration of Shani O. Zakay, Esq. is filed concurrently herewith.

18. Collectively, PAGA Counsel spent a total of 206.2 hours successfully litigating this matter for a total combined loadstar of \$111,867.50. Thus, the Attorneys' Fee request is equal to Class Counsel's loadstar with a negative 0.89 multiplier.

19. PAGA Counsel's loadstar is summarized by firm below:

<u>FIRM</u>	<u>Hours</u>	<u>Total</u>
JCL Law Firm, APC.	31	\$ 21,300.00
ZLG	175.2	\$90,567.50
Total	206.2	\$111,867.50

20. Prior to incurring costs for filing of this motion, PAGA Counsel collectively expended \$10,605.84 prosecuting this action (JCL Law Firm, APC - \$6,310.12 and Zakay Law Group, APLC - \$4,295.72).

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

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed this 4th day of September 2024, at San Diego, California.

3
4 **JCL LAW FIRM, APC**

5 By: 
6 Jean-Claude Lapuyade
7 Attorney for Plaintiff
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EXHIBIT 1

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff ELIDETH CARBAJAL, individually and on behalf of similarly situated aggrieved PAGA members (“Plaintiff”) and defendant KEYLEX, INC. dba KEYES LEXUS (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendant captioned *Elideth Carbajal, an individual, on behalf of herself and on behalf of other Aggrieved Employees and the State of California v. Keylex, Inc. dba Keyes Lexus, et al.* Case No. 20STCV49714, initiated on December 30, 2020 and pending in Superior Court of the State of California, County of Los Angeles.

1.2. “Administrator” means Apex Class Action LLC, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.

1.4. “Aggrieved Employee” means all persons within the State of California who are or were employed by Defendant as nonexempt employees in the State of California during the PAGA Period.

1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

1.7. “Court” means the Superior Court of California, County of Los Angeles.

1.8. “Defense Counsel” means Fisher & Phillips, LLP.

1.9. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final on the day the Court enters Judgment.

1.10. “Gross Settlement Amount” means \$100,000 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA

Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Service Award, and the Administrator's Expenses Payment.

1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.12. "Judgment" means the judgment entered by the Court based upon the Final Approval.

1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Service Award, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.

1.16. "PAGA Counsel" means Zakay Law Group, APLC and JCL Law Firm, APC, the attorneys representing the Plaintiff in the Action.

1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.19. "PAGA Period" means the period from December 14, 2019 to March 11, 2024.

1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.21. "PAGA Notice" means Plaintiff's December 14, 2020 and February 23, 2021 letters to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$10,341.67) and the 75% to LWDA (\$31,025.00) in settlement of PAGA claims.

1.23. "Plaintiff" means ELIDETH CARBAJAL, the named plaintiff in the Action.

1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.

1.25. “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

1.26. “Released Parties” means: Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

1.27. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.28. “Defendant” means named Defendant KEYLEX, INC. dba KEYES LEXUS.

2. RECITALS.

2.1. On December 30, 2020, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for (1) unfair competition; (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to provide required meal periods; (5) failure to provide required rest periods; (6) failure to reimburse employees for required expenses; (7) failure to provide accurate itemized statements; and (8) failure to timely pay wages when due. Plaintiff subsequently dismissed her individual claims and class claims against Defendant without prejudice, and filed a First Amended Complaint on March 11, 2021 to assert a cause of action for violations of the PAGA. On April 19, 2021, Plaintiff filed a Second Amended Complaint, which corrected an error in the First Amended Complaint. The Second Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.3. On February 22, 2022, the Parties participated in an all-day mediation presided over by Kelly A. Knight, Esq. Prior to mediation, Plaintiff obtained, through informal discovery, a sample of time and pay records from the Class. The Parties did not settle at mediation, and continued to litigate this Action following the unsuccessful mediation.

2.4 On November 17, 2023, the Parties filed a Joint Stipulation with the Court, submitting Plaintiff’s individual PAGA claim to binding arbitration and requesting a stay of Plaintiff’s non-individual representative PAGA claims pending completion of arbitration. The request to stay was granted on December 5, 2023. The Parties subsequently engaged in settlement negotiations, which led to this Agreement to settle the Action.

2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$100,000 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than one-third which is currently estimated to be \$33,333.34 and PAGA Counsel Litigation Expenses Payment of not more than \$15,000. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file a joint stipulation or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$5,300.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$5,300.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3 To Plaintiff: A Service Award Payment in the amount of \$5,000 to be paid from the Gross Settlement Amount for her services on behalf of the Aggrieved Employees.

3.2.4. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$41,366.67 to be paid from the Gross Settlement Amount, with 75% (\$31,025.00) allocated to the LWDA PAGA Payment and 25% (\$10,341.67) allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$10,341.67) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved

Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 166 Aggrieved Employees who worked a total of 4,789 of PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within fifteen (15) days following the Parties' execution of this Agreement, Defendant will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences [that occurred during the PAGA Period], including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice.

5.3 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. **STIPULATION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties agree to jointly prepare and file an application or stipulation for approval of this Settlement.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or stipulation for approval of this Settlement no later than 30 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or stipulation for approval of this Settlement and/or the supporting declarations and documents,

PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the stipulation for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Apex Class Action LLC to serve as the Administrator and verified that, as a condition of appointment, Apex Class Action LLC agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR CLAUSE. Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 166 Aggrieved Employees who worked 4,789 Pay Periods during the PAGA Period. If, as of March 11, 2024, the estimated number of pay periods exceeds 4,789 pay periods by more than five (5%) percent, Defendants shall increase the Gross Settlement Amount proportionally (i.e., number of pay periods over 105% of 4,789).

9. CONTINUING JURISDICTION OF THE COURT. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the

right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be

relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

10.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

JCL LAW FIRM, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
T: 619-599-8292
jlapuyade@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
T: 619-892-7095
F: 858-404-9203
Shani@zakaylaw.com

To Defendant:

FISHER & PHILLIPS, LLP
4747 Executive Drive, Suite 1000
San Diego, CA 92121
T: (858) 597-9600
F: (858) 597-9601
asloustcher@fisherphillips.com
choffman@fisherphillips.com
cchampine@fisherphillips.com

10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.



Elideth Carbajal (Sep 4, 2024 10:27 PDT)

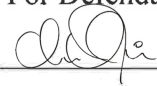
For Plaintiff



Counsel For Plaintiff



For Defendant



Counsel For Defendant

To Plaintiff:

JCL LAW FIRM, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
T: 619-599-8292
jlapuyade@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
T: 619-892-7095
F: 858-404-9203
Shani@zakaylaw.com

To Defendant:

FISHER & PHILLIPS, LLP
4747 Executive Drive, Suite 1000
San Diego, CA 92121
T: (858) 597-9600
F: (858) 597-9601
asloustcher@fisherphillips.com
choffman@fisherphillips.com
cchampine@fisherphillips.com

10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.



Elideth Carbajal (Sep 4, 2024 10:27 PDT)

For Plaintiff



Counsel For Plaintiff



For Defendant



Counsel For Defendant

EXHIBIT 2



3990 Old Town Avenue, Suite C204
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December 14, 2020

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

KEYES MOTORS, INC. dba KEYES LEXUS
c/o Kevin D. Hochmann
5855 Van Nuys Blvd.
Van Nuys, CA 91401
Via Certified Mail with Return Receipt

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:

Our office represents Plaintiff ELIDETH CARBAJAL (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against KEYES MOTORS, INC. dba KEYES LEXUS (“Defendant”). Plaintiff was employed by Defendant in California from November 2018 to October 2020 as a salesperson entitled to overtime pay and the legally required meal and rest breaks. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, including overtime, and failed to provide meal breaks and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep accurate time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1198.5 violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This

information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

The action consists of, and Plaintiff is seeking to pursue these claims on behalf of, all non-exempt and exempt employees, all of which are the aggrieved employees.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,
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)

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ELIDETH CARBAJAL, an individual, on
behalf of herself and on behalf of all persons
similarly situated and the State of California,

Plaintiff,

v.

KEYES MOTORS, INC. dba KEYES
LEXUS; a California Corporation; 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 §1197, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et se*.
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 8) FAILURE TO TIMELY PAY WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203;

DEMAND FOR A JURY TRIAL

1 Plaintiff ELIDETH CARBAJAL (“PLAINTIFF” or “PLAINTIFFS”), an
2 individual, on behalf of herself and all other similarly situated current and former
3 employees, alleges on information and belief, except for her own acts and knowledge
4 which are based on personal knowledge, the following:

5 **THE PARTIES**

6 1. Defendant KEYES MOTORS INC. dba KEYES LEXUS (“DEFENDANT”) is a
7 California corporation and at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business throughout the State of California.

9 2. DEFENDANT owns and operates a car dealership in California.

10 3. PLAINTIFF was employed by DEFENDANT in California from November
11 2018 to October 2020 and was at all times during her employment with DEFENDANT
12 classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to
13 the legally required meal and rest periods and payment of minimum and overtime wages due for
14 all time worked..

15 4. PLAINTIFF brings this Class Action on behalf of herself 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 on the date four (4) years prior to the filing of this Complaint and ending on
19 the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
20 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
21 dollars (\$5,000,000.00).

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

1 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal
2 and equitable relief.

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

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

20 **THE CONDUCT**

21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
22 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
23 worked, meaning the time during which an employee is subject to the control of an employer,
24 including all the time the employee is suffered or permitted to work. DEFENDANT required
25 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
26 they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to
27 work during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was
28 from time to time interrupted by work assignments while what should have been PLAINTIFF's
off-duty meal break. Indeed there were days where PLAINTIFF did not even receive a partial

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

6 9. As a result of their rigorous work schedules, PLAINTIFF and other
7 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
8 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
9 other CALIFORNIA CLASS Members were required to perform work from time to time as
10 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
11 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
12 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
13 which these employees are required by DEFENDANT to work ten (10) hours of work.
14 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
15 without additional compensation and in accordance with DEFENDANT's strict corporate policy
16 and practice. DEFENDANT failed to maintain adequate staffing levels while increasing the
17 production levels for each employee.

18 10. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
19 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
20 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
21 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
22 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
23 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
24 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
25 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
26 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
27 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
28 proper rest periods by DEFENDANT and DEFENDANT's managers.

1 11. State law provides that employees must be paid overtime at one-and-one-half
2 times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
3 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
4 employee’s performance.

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

19 13. DEFENDANT as a matter of corporate policy, practice and procedure,
20 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and
21 the other CALIFORNIA CLASS Members for required business expenses incurred by the
22 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
23 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
24 are required to indemnify employees for all expenses incurred in the course and scope of their
25 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
26 her employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
28

1 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
2 believed them to be unlawful."

3 14. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
4 Members as a business expense, were required by DEFENDANT to use their own personal
5 cellular phones as a result of and in furtherance of their job duties as employees for
6 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
7 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
8 result, in the course of their employment with DEFENDANT, PLAINTIFF and other members
9 of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
10 were not limited to, costs related to the use of their personal cellular phones and travel with their
11 personal vehicles, on behalf of and for the benefit of DEFENDANT.

12 15. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
13 other members of the CALIFORNIA CLASS with complete and accurate wage statements
14 which failed to show, among other things, the correct net and gross wages earned. Cal. Lab.
15 Code § 226 provides that every employer shall furnish each of his or her employees with an
16 accurate itemized wage statement in writing showing, among other things, gross wages earned
17 and all applicable hourly rates in effect during the pay period and the corresponding amount of
18 time worked at each hourly rate. Aside, from the violations listed above in this paragraph,
19 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
20 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
21 time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
22 statements which violated Cal. Lab. Code § 226.

23 16. In violation of the applicable sections of the California Labor Code and the
24 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
25 matter of company policy, practice and procedure, intentionally, knowingly and systematically
26 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
27 missed meal and rest periods and all wages due to them. This uniform policy and practice of
28 DEFENDANT was intended to purposefully avoid the payment for all time worked as required

1 by California law which allows DEFENDANT to illegally profit and gain an unfair advantage
2 over competitors who complied with the law. To the extent equitable tolling operates to toll
3 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
4 PERIOD should be adjusted accordingly.

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

16 18. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
17 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
18 Labor Code and failed to pay her all minimum and overtime wages due to her. DEFENDANT
19 did not have a policy or practice which provides timely off-duty meal and rest breaks to
20 PLAINTIFF and also failed to compensate PLAINTIFF for her missed meal and rest breaks.
21 The nature of the work performed by the PLAINTIFF did not prevent her from being relieved of
22 all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT’s
23 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
24 DEFENDANT’s business records. DEFENDANT also failed to pay PLAINTIFF earned
25 commission wages upon termination of employment with DEFENDANT. To date,
26 DEFENDANT has yet to pay PLAINTIFF all of her wages due to her and DEFENDANT has
27 failed to pay any penalties owed to her under California Labor Code Section 203. The amount in
28 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

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1 wilfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
2 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
3 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
4 permits or suffers to permit this work.

5 24. DEFENDANT has the legal burden to establish that each and every
6 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
7 required by California laws. The DEFENDANT, however, as a matter of uniform and
8 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
9 PERIOD and still fails to have in place a policy or practice to ensure that each and every
10 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
11 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
12 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
13 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

14 25. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
15 CLASS Members is impracticable.

16 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
17 California law by:

- 18 a. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
19 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
20 in place company policies, practices and procedures that uniformly and
21 systematically failed to record and pay PLAINTIFF and the other members of the
22 CALIFORNIA CLASS for all time worked, including minimum wages owed and
23 overtime wages owed for work performed by these employees;
- 24 b. Committing an act of unfair competition in violation of the UCL, by failing
25 to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS
26 with the legally required meal and rest periods; and,
- 27 c. Committing an act of unfair competition in violation of the California Unfair
28 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.

1 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA
2 CLASS members with necessary expenses incurred in the discharge of their job
3 duties.

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

- 6 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
7 joinder of all such persons is impracticable and the disposition of their claims as
8 a class will benefit the parties and the Court;
- 9 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
10 raised in this Complaint are common to the CALIFORNIA CLASS will apply
11 uniformly to every member of the CALIFORNIA CLASS;
- 12 c. The claims of the representative PLAINTIFF are typical of the claims of each
13 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
14 of the CALIFORNIA CLASS, was paid on a draw vs. commission compensation
15 scheme who was subjected to the DEFENDANT's deceptive practice and policy
16 which failed to provide the legally required meal and rest periods to the
17 CALIFORNIA CLASS and thereby systematically underpaid compensation to
18 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic
19 injury as a result of DEFENDANT's employment practices. PLAINTIFFS and
20 the members of the CALIFORNIA CLASS were and are similarly or identically
21 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
22 misconduct engaged in by DEFENDANT; and,
- 23 d. The representative PLAINTIFF will fairly and adequately represent and protect
24 the interest of the CALIFORNIA CLASS, and have retained counsel who are
25 competent and experienced in Class Action litigation. There are no material
26 conflicts between the claims of the representative PLAINTIFF and the members
27 of the CALIFORNIA CLASS that would make class certification inappropriate.
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Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

28. 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:

- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:
 - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or;
 - ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;
 - i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seek declaratory relief holding that the DEFENDANT'S policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

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

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

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

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

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

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

29. 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 were 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;

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

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

18 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

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

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

- c. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- d. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- e. Whether DEFENDANT's conduct was willful.

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

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required paid rest breaks;
- e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and,
- f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the

1 employee all wages due without abatement, by failing to tender full payment
2 and/or restitution of wages owed or in the manner required by California law to
3 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
4 their employment.

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

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

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

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

- 7 a. Without class certification and determination of declaratory, injunctive, statutory
8 and other legal questions within the class format, prosecution of separate actions
9 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
10 the risk of:
- 11 i. Inconsistent or varying adjudications with respect to individual members
12 of the CALIFORNIA LABOR SUB-CLASS which would establish
13 incompatible standards of conduct for the parties opposing the
14 CALIFORNIA LABOR SUB-CLASS; or
 - 15 ii. Adjudication with respect to individual members of the CALIFORNIA
16 LABOR SUB-CLASS which would as a practical matter be dispositive of
17 interests of the other members not party to the adjudication or
18 substantially impair or impede their ability to protect their interests.
- 19 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
20 refused to act on grounds generally applicable to the CALIFORNIA LABOR
21 SUB-CLASS, making appropriate class-wide relief with respect to the
22 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT
23 uniformly fail to pay all wages due. Including the correct wages for all time
24 worked by the members of the CALIFORNIA LABOR SUB-CLASS as required
25 by law;
- 26 c. Common questions of law and fact predominate as to the members of the
27 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
28 violations of California Law as listed above, and predominate over any question

1 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
2 Class Action is superior to other available methods for the fair and efficient
3 adjudication of the controversy, including consideration of:

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

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

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

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

22 iii. In the context of wage litigation because a substantial number of
23 individual CALIFORNIA LABOR SUB-CLASS Members will avoid
24 asserting their legal rights out of fear of retaliation by DEFENDANT,
25 which may adversely affect an individual's job with DEFENDANT or
26 with a subsequent employer, the Class Action is the only means to assert
27 their claims through a representative; and,
28

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

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

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

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

16 **FIRST CAUSE OF ACTION**

17 **UNLAWFUL BUSINESS PRACTICES**

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

19 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

23 41. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
24 Code § 17021.

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

1 Any person who engages, has engaged, or proposes to engage in unfair competition may
2 be enjoined in any court of competent jurisdiction. The court may make such orders or
3 judgments, including the appointment of a receiver, as may be necessary to prevent the
4 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).

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

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

18 45. By the conduct alleged herein, DEFENDANT's practices were deceptive and
19 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
20 mandated meal and rest periods, the required amount of compensation for missed meal and rest
21 periods and overtime and minimum wages owed, and failed to reimburse all necessary business
22 expenses incurred, due to a systematic business practice that cannot be justified, pursuant to the
23 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
24 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
25 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
26 withheld.

27 46. By the conduct alleged herein, DEFENDANT'S practices were also unlawful,
28 unfair and deceptive in that DEFENDANT'S employment practices caused PLAINTIFF and the

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with
2 DEFENDANT.

3 47. By the conduct alleged herein, DEFENDANT'S practices were also unfair and
4 deceptive in that DEFENDANT'S uniform policies, practices and procedures failed to provide
5 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
6 members as required by Cal. Lab. Code §§ 226.7 and 512.

7 48. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
8 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
9 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
10 for each workday in which a second off-duty meal period was not timely provided for each ten
11 (10) hours of work.

12 49. PLAINTIFFS further demand on behalf of themselves and on behalf of each
13 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
14 was not timely provided as required by law.

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

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

26 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
27 and do, seek such relief as may be necessary to restore to them the money and property which
28 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the

1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
2 unfair business practices, including earned but unpaid wages for all time worked.

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

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

14
15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES**

17 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

18 **(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against all
19 Defendants)**

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

23 56. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
25 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
26 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
27 Members.

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

1 58. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
2 commission is the minimum wage to be paid to employees, and the payment of a lesser wage
3 than the minimum so fixed is unlawful.

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

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

11 61. DEFENDANT's uniform pattern of unlawful wage and hour practices
12 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
13 whole, as a result of implementing a uniform policy and practice that denied accurate
14 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
15 CLASS in regards to minimum wage pay.

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

22 63. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
23 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
24 receive the correct minimum wage compensation for their time worked for DEFENDANT.

25 64. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
26 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
27 than they were entitled to, constituting a failure to pay all earned wages.

28

1 65. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
2 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
3 CLASS for the true time they worked, PLAINTIFFS and the other members of the
4 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
5 injury in amounts which are presently unknown to them and which will be ascertained
6 according to proof at trial.

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

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

22 68. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
24 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
25 the California Labor Code and/or other applicable statutes. To the extent minimum wage
26 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
27 who have terminated their employment, DEFENDANT’s conduct also violates Labor Code §§
28 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties

1 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA
2 LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,
3 intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR
4 SUB-CLASS Members are entitled to seek and recover statutory costs.

5
6 **THIRD CAUSE OF ACTION**
7 **FAILURE TO PAY OVERTIME COMPENSATION**
8 **(Cal. Lab. Code §§510, et seq.)**
9 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and**
10 **against all Defendants)**

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

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

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

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

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

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

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

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

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

21 78. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
22 from the overtime requirements of the law. None of these exemptions are applicable to the
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
25 subject to a valid collective bargaining agreement that would preclude the causes of action
26 contained herein this Complaint. Rather, PLAINTIFF bring this Action on behalf of herself and
27 the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
28 negotiable, non-waiveable rights provided by the State of California.

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

4 80. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
5 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
6 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
7 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
8 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
9 failed to accurately record and pay as evidenced by DEFENDANT's business records and
10 witnessed by employees.

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

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

24 83. In performing the acts and practices herein alleged in violation of California labor
25 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
26 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
27 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
28 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter

1 disregard for their legal rights, or the consequences to them, and with the despicable intent of
2 depriving them of their property and legal rights, and otherwise causing them injury in order to
3 increase company profits at the expense of these employees.

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

15
16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**
18 **(Cal. Lab. Code §§ 226.7 & 512)**

19 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
20 **Defendants)**

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

24 86. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
25 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
26 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and
27 Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR
28 SUB-CLASS MEMBERS does not prevent these employees from being relieved of all of their

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

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

17 88. As a proximate result of the aforementioned violations, PLAINTIFFS and
18 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
19 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
20

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REQUIRED REST PERIODS** 23 **(Cal. Lab. Code §§ 226.7 & 512)**

24 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
25 **Defendants)**

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

90. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees 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 from time to time. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

SIXTH CAUSE OF ACTION

FOR FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES

(Cal. Lab. Code §§ 2802)

(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against all Defendants)

93. 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.

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

1 An employer shall indemnify his or her employee for all necessary expenditures or
2 losses incurred by the employee in direct consequence of the discharge of his or her
3 duties, or of his or her obedience to the directions of the employer, even though
4 unlawful, unless the employee, at the time of obeying the directions, believed them
5 to be unlawful.

6 95. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
7 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
8 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
9 benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR
10 SUB-CLASS members for expenses which included, but were not limited to, costs related to
11 using their personal cellular phones all on behalf of and for the benefit of DEFENDANT.
12 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
13 DEFENDANT to use their personal cell phones to respond to work related issues.
14 DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFFS and
15 the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their
16 personal cellular phones for DEFENDANT within the course and scope of their employment for
17 DEFENDANT. These expenses were necessary to complete their principal job duties.
18 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation.
19 Although these expenses were necessary expenses incurred by PLAINTIFFS and the
20 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and
21 reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for these
22 expenses as an employer is required to do under the laws and regulations of California.

23 96. PLAINTIFF therefore demandS reimbursement for expenditures or losses
24 incurred by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their
25 job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
26 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

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

12 100. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
13 § 226, causing injury and damages to PLAINTIFFS and the other members of the
14 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
15 expended calculating the correct wages for all missed meal and rest breaks and the amount of
16 employment taxes which were not properly paid to state and federal tax authorities. These
17 damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of the
18 CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars
19 (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars
20 (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an
21 amount according to proof at the time of trial (but in no event more than four thousand dollars
22 (\$4,000.00) for PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-
23 CLASS herein).

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EIGHTH CAUSE OF ACTION
FOR FAILURE TO TIMELY PAY WAGES WHEN DUE
(Cal. Lab. Code §§ 201, 202, 203)
(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all Defendants)

101. 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.

102. Cal. Lab. Code § 200 provides, in relevant part, that:

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

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

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

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

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

106. Cal. Lab. Code § 203 provides, in relevant part, that:

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

107. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS Members terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

108. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated, PLAINTIFF demands 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.

NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§ 2698 et seq.)

(Alleged by PLAINTIFF against all Defendants)

109. PLAINTIFFS reallege and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

110. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private

1 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
2 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
3 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
4 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
5 Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be
6 subject to arbitration.

7 111. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, bring this Representative Action on behalf of the State of California with respect to
10 themselves and all individuals who are or previously were employed by DEFENDANT and
11 classified as non-exempt employees in California during the time period of August 7, 2019 until
12 the present (the "AGGRIEVED EMPLOYEES").

13 112. On August 7, 2020, PLAINTIFF gave written notice by certified mail to the
14 Labor and Workforce Development Agency (the "Agency") and the employer of the
15 specific provisions of this code alleged to have been violated as required by Labor Code §
16 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
17 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
18 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
19 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
20 to all AGGRIEVED EMPLOYEES as herein defined.

21 113. The policies, acts and practices heretofore described were and are an unlawful
22 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
23 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
24 minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal
25 and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
26 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
27 including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 512, 558,
28 1194, 1197, 1197.1, 2802, and the applicable Industrial Wage Order(s), and thereby gives rise to

1 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
2 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
3 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
4 the other AGGRIEVED EMPLOYEES.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFF prays for a judgment against each Defendants, jointly and
8 severally, as follows:

9 1. On behalf of the CALIFORNIA CLASS:

- 10 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
11 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
12 b. An order temporarily, preliminarily and permanently enjoining and restraining
13 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
14 c. An order requiring DEFENDANT to pay all overtime wages and all sums
15 unlawfully withheld from compensation due to PLAINTIFFS and the other
16 members of the CALIFORNIA CLASS; and
17 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
18 for restitution of the sums incidental to DEFENDANT's violations due to
19 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

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

- 21 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
22 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
23 action pursuant to Cal. Code of Civ. Proc. § 382;
24 b. Compensatory damages, according to proof at trial, including compensatory
25 damages for minimum wage and overtime wage compensation due to
26 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
27 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD
28 plus interest thereon at the statutory rate;

- 1 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
2 the applicable IWC Wage Order;
- 3 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
4 which a violation occurs and one hundred dollars (\$100) per each member of the
5 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
6 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
7 an award of costs for violation of Cal. Lab. Code § 226; and
- 8 e. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
9 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
10 costs of suit;
- 11 f. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
12 1197; and
- 13 g. The wages of all terminated employees in the CALIFORNIA LABOR
14 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
15 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 16 3. On behalf of the State of California and with respect to all AGGRIEVED
17 EMPLOYEES:
- 18 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
19 General Act of 2004.

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4. On all claims:

- 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, and/or § 1194.

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for PLAINTIFF

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EXHIBIT 1

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: *K&S Motors Inc*
c/o Kevin D. Hochmann
5855 Van Nuys Blvd.
Van Nuys, CA 91401



9590 9402 6111 0209 9342 24

2. Article Number (Transfer from service label)

7020 2450 0001 4373 5478

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

☐ Agent
☐ Addressee

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ d Mail | |
| ☐ d Mail Restricted Delivery (500) | |

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

EXHIBIT 3



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

February 23, 2021

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

KEYES MOTORS, INC. dba KEYES LEXUS
c/o CT CORPORATION SYSTEM
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
Via Certified Mail with Return Receipt

KEYLEX, INC. dba KEYES LEXUS
c/o CT CORPORATION SYSTEM
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
Via Certified Mail with Return Receipt

HOWARD KEYES
5855 Van Nuys Blvd
Van Nuys, CA 91401
Via Certified Mail with Return Receipt

Case Name: *Elideth Carbajal v. Keyes Motos, Inc., et al.*
Case No.: 20STCV49714
LWDA Case No.: LWDA-CM-815337-20
Re: AMENDED 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:

Our office represents Plaintiff ELIDETH CARBAJAL (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against KEYES MOTORS, INC. dba KEYES LEXUS, KEYLEX, INC. dba KEYES LEXUS, and HOWARD KEYES (“Defendants”). Plaintiff was employed by Defendant in California from November 2018 to October 2020 as a salesperson entitled to overtime pay and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, including overtime, and failed to provide meal breaks and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep accurate time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1198.5 violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff’s original claim was submitted to the LWDA on December 14, 2020 against Defendant KEYES MOTORS, INC. dba KEYES LEXUS. Plaintiff has since identified DOES 1

and 2, who acted as Plaintiff's joint-employers in addition to Defendant KEYES MOTOS, INC. dba KEYES LEXUS, as KEYLEX, INC. dba KEYES LEXUS and HOWARD KEYES. Plaintiff therefore amends her December 14, 2020 Notice to add as KEYLEX, INC. dba KEYES LEXUS and HOWARD KEYES as additional employers and defendants in this case. KEYLEX, INC. dba KEYES LEXUS and HOWARD KEYES will be added to Plaintiff's complaint with the San Los Angeles Superior Court in the same manner. KEYES MOTORS, INC. dba KEYES LEXUS, KEYLEX, INC. dba KEYES LEXUS, and HOWARD KEYES are hereinafter collectively referred to as "Defendants".

A true and correct copy of the proposed amended Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached amended Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

The action consists of, and Plaintiff is seeking to pursue these claims on behalf of, all non-exempt and exempt employees, all of which are the aggrieved employees.

This notice is provided to enable Plaintiff to proceed with the amended Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* As counsel, our intention is to vigorously prosecute the claims as alleged in the amended Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,
JCL LAW FIRM, APC

A handwritten signature in black 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)
Jackland K. Hom (State Bar #327243)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com

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
jlapuyade@jcl-lawfirm.com

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ELIDETH CARBAJAL; an individual, on
behalf of herself and on behalf of other
Aggrieved Employees and the State of
California,

Plaintiff,

v.

KEYES MOTORS, INC. dba KEYES LEXUS,
a California corporation; KEYLEX, INC. dba
KEYES LEXUS, a California Corporation
previously named as fictitious DOE 1;
HOWARD KEYES, an individual previously
named as fictitious DOE 2; and DOES 3-50,
Inclusive,

Defendants.

Case No. 20STCV49714

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

1) VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT PURSUANT
TO LABOR CODE SECTIONS 2698, et
seq.

1 Plaintiff ELIDETH CARBAJAL (“PLAINTIFF”), on behalf of the people of the State of
2 California and “aggrieved employees” acting as a private attorney general under the Labor Code Private
3 Attorney General Action of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information and belief,
4 except for her own acts and knowledge which are based on personal knowledge, the following:

5 **INTRODUCTION**

6 1. PLAINTIFF brings this action against defendants KEYES MOTORS INC. dba KEYES
7 LEXUS, KEYLEX, INC. dba KEYES LEXUS, and HOWARD KEYES seeking only to recover
8 PAGA civil penalties for himself, and on behalf of all current and former aggrieved employees that
9 worked for KEYES MOTORS INC. dba KEYES LEXUS, KEYLEX, INC. dba KEYES LEXUS
10 and/or HOWARD KEYES. PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699.** To the extent that statutory violations are mentioned
12 for wage violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations in this action, but simply the civil penalties permitted by California Labor Code § 2699.
14 Notwithstanding, PLAINTIFF is not abandoning her right to pursue her individual claims for, *inter*
15 *alia*, KEYES MOTORS INC. dba KEYES LEXUS, KEYLEX, INC. dba KEYES LEXUS and/or
16 HOWARD KEYES’ alleged wage violations, and/or general or special damages arising from those
17 violations, and he fully intends to, at a future date, pursue claims for those individual claims and
18 damages.

19 2. California has enacted the PAGA to permit an individual to bring an action on behalf of
20 herself and on behalf of others for PAGA penalties *only*, which is the precise and sole nature of this
21 action.

22 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for KEYES MOTORS
23 INC. dba KEYES LEXUS, KEYLEX, INC. dba KEYES LEXUS and HOWARD KEYES’ violations
24 under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any other relief the
25 Court deems proper pursuant to the PAGA. Nothing in this complaint should be construed as
26 attempting to obtain any relief that would not be available in a PAGA-only action.

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1 **THE PARTIES**

2 4. Defendant KEYES MOTORS INC. dba KEYES LEXUS is a California corporation and
3 at all relevant times mentioned herein conducted and continues to conduct substantial and regular
4 business throughout the State of California, and owns, operates and/or controls KEYES LEXUS, a
5 new and used car dealership located in the City of Van Nuys, County of Los Angeles.

6 5. Defendant KEYLEX, INC. dba KEYES LEXUS, previously named as fictitious DOE 1,
7 is a California corporation and at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business throughout the State of California and owns, operates and/or
9 controls KEYES LEXUS, a new and used car dealership located in the City of Van Nuys, County of
10 Los Angeles.

11 6. Defendant HOWARD KEYES, individually, previously named as fictitious DOE 2, is
12 the Chief Executive Officer and Chief Financial Officer for defendants KEYES MOTORS INC. dba
13 KEYES LEXUS and KEYLEX, INC. dba KEYES LEXUS, and has complete autonomy with respect
14 to KEYES MOTORS INC. dba KEYES LEXUS and KEYLEX, INC. dba KEYES LEXUS' day to
15 day operations and was directly involved in – and directly responsible for- the illegal pay policies and
16 practices articulated herein.

17 7. DEFENDANTS KEYES MOTORS INC. dba KEYES LEXUS, KEYLEX, INC. dba
18 KEYES LEXUS, HOWARD KEYES and DOES 3-50 (hereinafter collectively "DEFENDANTS")
19 were the joint employers of PLAINTIFF as evidenced by paychecks and by the company PLAINTIFF
20 performed work for respectfully and are therefore jointly responsible as employers for the conduct
21 alleged herein and are therefore collectively referred to herein as DEFENDANTS.

22 8. DEFENDANTS retails automobile vehicles. DEFENDANTS offer new and used cars
23 as well as financing, maintenance, and repair services.

24 9. PLAINTIFF was employed by DEFENDANTS in California from November 2018 to
25 October 2020 and was at all times during her employment with DEFENDANTS classified by
26 DEFENDANTS as a non-exempt employee, paid on an hourly basis, eligible to earn commission
27 compensation and other non-discretionary incentive compensation, entitled to the legally required meal
28 and rest periods, and payment of minimum and overtime wages due for all time worked.

1 10. PLAINTIFF, and such persons that may be added from time to time who satisfy the
2 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
3 this Representative Action on behalf of the State of California with respect to herself and all individuals
4 who are or previously were employed by DEFENDANT KEYES MOTORS INC. dba KEYES LEXUS
5 and/or DEFENDANT KEYLEX, INC. dba KEYES LEXUS and/or HOWARD KEYES in California
6 (the "AGGRIEVED EMPLOYEES") during the time period of December 14, 2019 until the present
7 (the "PAGA PERIOD").

8 11. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently or
9 formerly employed by DEFENDANTS during the PAGA PERIOD, brings this representative action
10 pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANTS'S violation of California
11 Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d),
12 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, and 2804, and the applicable Wage Order. Based upon
13 the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the
14 meaning of Labor Code § 2699, *et seq.*

15 12. The true names and capacities, whether individual, corporate, subsidiary, partnership,
16 associate or otherwise of DEFENDANTS DOES 3 through 50, inclusive, are presently unknown to
17 PLAINTIFF who therefore sues these DOE DEFENDANTS by such fictitious names pursuant to Cal.
18 Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names
19 and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed
20 and believes, and based upon that information and belief alleges, that the DEFENDANTS, inclusive
21 of DOES 3-50, are responsible in some manner for one or more of the events and happenings that
22 proximately caused the injuries and damages hereinafter alleged.

23 13. The agents, servants and/or employees of the DEFENDANTS and each of them acting on
24 behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent,
25 servant and/or employee of the DEFENDANTS, and personally participated in the conduct alleged
26 herein on behalf of the DEFENDANTS with respect to the conduct alleged herein. Consequently, the
27 acts of each DEFENDANTS are legally attributable to the other DEFENDANTS and all
28 DEFENDANTS are jointly and severally liable to PLAINTIFF and the other AGGRIEVED

1 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the DEFENDANTS'
2 agents, servants and/or employees.

3 **THE CONDUCT**

4 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS was
5 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the
6 time during which an employee is subject to the control of an employer, including all the time the
7 employee is suffered or permitted to work. DEFENDANTS required PLAINTIFF and AGGRIEVED
8 EMPLOYEES to work without paying them for all the time they were under DEFENDANTS's control.
9 Specifically, DEFENDANTS required PLAINTIFF to work during what was supposed to be
10 PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work
11 assignments while what should have been PLAINTIFF's off-duty meal break. Indeed there were days
12 where PLAINTIFF did not even receive a partial lunch. As a result, PLAINTIFF and other
13 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by working
14 without their time being accurately recorded and without compensation at the applicable minimum
15 wage and overtime rates. DEFENDANTS's uniform policy and practice not to pay PLAINTIFF and
16 other AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANTS's business
17 records.

18 15. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
19 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and were
20 not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES
21 were required to perform work from time to time as ordered by DEFENDANTS for more than five (5)
22 hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to time
23 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
24 for some workdays in which these employees are required by DEFENDANTS to work ten (10) hours
25 of work. PLAINTIFF and other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without
26 additional compensation and in accordance with DEFENDANTS's strict corporate policy and practice.
27 DEFENDANTS failed to maintain adequate staffing levels while increasing the production levels for
28 each employee.

1 16. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES were
2 also required from time to time to work in excess of four (4) hours without being provided ten (10)
3 minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)
4 minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second
5 rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours
6 from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts
7 worked of ten (10) hours or more from time to time. PLAINTIFF and other AGGRIEVED
8 EMPLOYEES were also not provided with one hour wages in lieu thereof. As a result of their rigorous
9 work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time denied
10 their proper rest periods by DEFENDANTS and DEFENDANTS's managers.

11 17. State law provides that employees must be paid overtime at one-and-one-half times their
12 "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an
13 hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

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

27 19. DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally,
28 knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the other

1 AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFF and other
2 AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of
3 DEFENDANTS. Under California Labor Code Section 2802, employers are required to indemnify
4 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
5 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
6 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
7 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
8 employee, at the time of obeying the directions, believed them to be unlawful."

9 20. In the course of their employment PLAINTIFF and other AGGRIEVED EMPLOYEES
10 as a business expense, were required by DEFENDANTS to use their own personal cellular phones as a
11 result of and in furtherance of their job duties as employees for DEFENDANTS but were not
12 reimbursed or indemnified by DEFENDANTS for the cost associated with the use of their personal
13 cellular phones for DEFENDANTS's benefit. As a result, in the course of their employment with
14 DEFENDANTS, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business
15 expenses which included, but were not limited to, costs related to the use of their personal cellular
16 phones and travel with their personal vehicles, on behalf of and for the benefit of DEFENDANTS.

17 21. From time to time, DEFENDANTS also failed to provide PLAINTIFF and the other
18 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
19 among other things, the correct net and gross wages earned, total hours worked, all applicable hourly
20 rates and the corresponding number of hours worked at each applicable hourly rate, the name and address
21 of the legal entity that is the employer. Cal. Lab. Code § 226 provides that every employer shall furnish
22 each of his or her employees with an accurate itemized wage statement in writing showing, among
23 other things, gross wages earned and all applicable hourly rates in effect during the pay period and the
24 corresponding amount of time worked at each hourly rate. Aside, from the violations listed above in
25 this paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists all
26 the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANTS from time to
27 time provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements which
28 violated Cal. Lab. Code § 226.

22. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest periods and all wages due to them. This uniform policy and practice of DEFENDANTS was intended to purposefully avoid the payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

23. As a result of DEFENDANTS's intentional disregard of the obligation to meet this burden, DEFENDANTS failed to properly calculate and/or pay all required compensation for work performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations promulgated thereunder as herein alleged.

24. Specifically, as to PLAINTIFF, DEFENDANTS failed to provide all the legally required off-duty meal and rest breaks to her as required by the applicable Wage Order and Labor Code and failed to pay her all minimum and overtime wages due to her. DEFENDANTS did not have a policy or practice which provides timely off-duty meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for her missed meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent her from being relieved of all of her duties for the legally required off-duty meal periods. As a result, DEFENDANTS's failure to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANTS's business records. DEFENDANTS also failed to pay PLAINTIFF earned commission wages upon termination of employment with DEFENDANTS. To date, DEFENDANTS has yet to pay PLAINTIFF all of her wages due to her and DEFENDANTS has failed to pay any penalties owed to her under California Labor Code Section 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

JURISDICTION AND VENUE

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

1 26. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
2 395 and 395.5, because DEFENDANTS (i) currently maintains and at all relevant times maintained
3 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
4 committed the wrongful conduct herein alleged in this County against AGGRIEVED EMPLOYEES.

5 **FIRST CAUSE OF ACTION**

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

7 **[Cal. Lab. Code §§ 2698 et seq.]**

8 **(Alleged by PLAINTIFF against all DEFENDANTS)**

9 27. PLAINTIFF realleges and incorporate by this reference, as though fully set forth herein,
10 the prior paragraphs of this Complaint.

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

20 29. PLAINTIFF, and such persons that may be added from time to time who satisfy the
21 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
22 this Representative Action on behalf of the State of California with respect to herself and all individuals
23 who are or previously were employed by DEFENDANTS in California during the time period of
24 December 14, 2019 until the present (the "AGGRIEVED EMPLOYEES").

25 30. On December 14, 2020, PLAINTIFF gave written notice by certified mail to the Labor
26 and Workforce Development Agency (the "Agency") and the employer of the specific provisions
27 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1,
28 attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF

1 to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
2 PLAINTIFF may now commence a representative civil action under PAGA pursuant to Section 2699
3 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
4 defined.

5 31. The policies, acts and practices heretofore described were and are an unlawful business
6 act or practice because DEFENDANTS (a) failed to pay PLAINTIFF and other AGGRIEVED
7 EMPLOYEES minimum wages and separately compensated rest breaks at their regular rate of pay, (b)
8 failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest
9 breaks, (c) failed to provide accurate itemized wage statements, (d) failed to pay PLAINTIFF and other
10 AGGRIEVED EMPLOYEES the correct overtime rate, and (e) failed to timely pay wages, all in
11 violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited
12 to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558,
13 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, and 2804, and the applicable Industrial Wage
14 Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby
15 seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
16 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
17 the other AGGRIEVED EMPLOYEES.

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

26
27
28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and
3 severally, as follows:

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

- 6 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
7 General Act of 2004; and
8 b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
9

10 Dated: February 23, 2021

Respectfully Submitted,
ZAKAY LAW GROUP, A.P.C.

12 By: 
13 Shani O. Zakay
14 Attorneys for Plaintiff
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EXHIBIT 1

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December 14, 2020

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

KEYES MOTORS, INC. dba KEYES LEXUS
c/o Kevin D. Hochmann
5855 Van Nuys Blvd.
Van Nuys, CA 91401
Via Certified Mail with Return Receipt

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:

Our office represents Plaintiff ELIDETH CARBAJAL (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against KEYES MOTORS, INC. dba KEYES LEXUS (“Defendant”). Plaintiff was employed by Defendant in California from November 2018 to October 2020 as a salesperson entitled to overtime pay and the legally required meal and rest breaks. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, including overtime, and failed to provide meal breaks and rest breaks. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep accurate time records showing when Plaintiff began and ended each shift and meal period. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1198.5 violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This

information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

The action consists of, and Plaintiff is seeking to pursue these claims on behalf of, all non-exempt and exempt employees, all of which are the aggrieved employees.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,
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)

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ELIDETH CARBAJAL, an individual, on
behalf of herself and on behalf of all persons
similarly situated and the State of California,

Plaintiff,

v.

KEYES MOTORS, INC. dba KEYES
LEXUS; a California Corporation; 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 §1197, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et se*.
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 8) FAILURE TO TIMELY PAY WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203;

DEMAND FOR A JURY TRIAL

1 Plaintiff ELIDETH CARBAJAL (“PLAINTIFF” or “PLAINTIFFS”), an
2 individual, on behalf of herself and all other similarly situated current and former
3 employees, alleges on information and belief, except for her own acts and knowledge
4 which are based on personal knowledge, the following:

5 **THE PARTIES**

6 1. Defendant KEYES MOTORS INC. dba KEYES LEXUS (“DEFENDANT”) is a
7 California corporation and at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business throughout the State of California.

9 2. DEFENDANT owns and operates a car dealership in California.

10 3. PLAINTIFF was employed by DEFENDANT in California from November
11 2018 to October 2020 and was at all times during her employment with DEFENDANT
12 classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to
13 the legally required meal and rest periods and payment of minimum and overtime wages due for
14 all time worked..

15 4. PLAINTIFF brings this Class Action on behalf of herself 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 on the date four (4) years prior to the filing of this Complaint and ending on
19 the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
20 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
21 dollars (\$5,000,000.00).

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

1 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal
2 and equitable relief.

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

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

20 **THE CONDUCT**

21 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
22 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
23 worked, meaning the time during which an employee is subject to the control of an employer,
24 including all the time the employee is suffered or permitted to work. DEFENDANT required
25 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
26 they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to
27 work during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was
28 from time to time interrupted by work assignments while what should have been PLAINTIFF's
off-duty meal break. Indeed there were days where PLAINTIFF did not even receive a partial

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

6 9. As a result of their rigorous work schedules, PLAINTIFF and other
7 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off
8 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
9 other CALIFORNIA CLASS Members were required to perform work from time to time as
10 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
11 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
12 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
13 which these employees are required by DEFENDANT to work ten (10) hours of work.
14 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks
15 without additional compensation and in accordance with DEFENDANT's strict corporate policy
16 and practice. DEFENDANT failed to maintain adequate staffing levels while increasing the
17 production levels for each employee.

18 10. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
19 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
20 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
21 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
22 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
23 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
24 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
25 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
26 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
27 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
28 proper rest periods by DEFENDANT and DEFENDANT's managers.

1 11. State law provides that employees must be paid overtime at one-and-one-half
2 times their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
3 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
4 employee’s performance.

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

19 13. DEFENDANT as a matter of corporate policy, practice and procedure,
20 intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and
21 the other CALIFORNIA CLASS Members for required business expenses incurred by the
22 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
23 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
24 are required to indemnify employees for all expenses incurred in the course and scope of their
25 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
26 her employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
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1 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
2 believed them to be unlawful."

3 14. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
4 Members as a business expense, were required by DEFENDANT to use their own personal
5 cellular phones as a result of and in furtherance of their job duties as employees for
6 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
7 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
8 result, in the course of their employment with DEFENDANT, PLAINTIFF and other members
9 of the CALIFORNIA CLASS incurred unreimbursed business expenses which included, but
10 were not limited to, costs related to the use of their personal cellular phones and travel with their
11 personal vehicles, on behalf of and for the benefit of DEFENDANT.

12 15. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
13 other members of the CALIFORNIA CLASS with complete and accurate wage statements
14 which failed to show, among other things, the correct net and gross wages earned. Cal. Lab.
15 Code § 226 provides that every employer shall furnish each of his or her employees with an
16 accurate itemized wage statement in writing showing, among other things, gross wages earned
17 and all applicable hourly rates in effect during the pay period and the corresponding amount of
18 time worked at each hourly rate. Aside, from the violations listed above in this paragraph,
19 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
20 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
21 time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
22 statements which violated Cal. Lab. Code § 226.

23 16. In violation of the applicable sections of the California Labor Code and the
24 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
25 matter of company policy, practice and procedure, intentionally, knowingly and systematically
26 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
27 missed meal and rest periods and all wages due to them. This uniform policy and practice of
28 DEFENDANT was intended to purposefully avoid the payment for all time worked as required

1 by California law which allows DEFENDANT to illegally profit and gain an unfair advantage
2 over competitors who complied with the law. To the extent equitable tolling operates to toll
3 claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
4 PERIOD should be adjusted accordingly.

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

16 18. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
17 required off-duty meal and rest breaks to her as required by the applicable Wage Order and
18 Labor Code and failed to pay her all minimum and overtime wages due to her. DEFENDANT
19 did not have a policy or practice which provides timely off-duty meal and rest breaks to
20 PLAINTIFF and also failed to compensate PLAINTIFF for her missed meal and rest breaks.
21 The nature of the work performed by the PLAINTIFF did not prevent her from being relieved of
22 all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT’s
23 failure to provide PLAINTIFF with the legally required meal periods is evidenced by
24 DEFENDANT’s business records. DEFENDANT also failed to pay PLAINTIFF earned
25 commission wages upon termination of employment with DEFENDANT. To date,
26 DEFENDANT has yet to pay PLAINTIFF all of her wages due to her and DEFENDANT has
27 failed to pay any penalties owed to her under California Labor Code Section 203. The amount in
28 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

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1 wilfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal
2 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
3 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
4 permits or suffers to permit this work.

5 24. DEFENDANT has the legal burden to establish that each and every
6 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
7 required by California laws. The DEFENDANT, however, as a matter of uniform and
8 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS
9 PERIOD and still fails to have in place a policy or practice to ensure that each and every
10 CALIFORNIA CLASS Member is paid as required by law. This common business practice is
11 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
12 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
13 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

14 25. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
15 CLASS Members is impracticable.

16 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
17 California law by:

- 18 a. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
19 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
20 in place company policies, practices and procedures that uniformly and
21 systematically failed to record and pay PLAINTIFF and the other members of the
22 CALIFORNIA CLASS for all time worked, including minimum wages owed and
23 overtime wages owed for work performed by these employees;
- 24 b. Committing an act of unfair competition in violation of the UCL, by failing
25 to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS
26 with the legally required meal and rest periods; and,
- 27 c. Committing an act of unfair competition in violation of the California Unfair
28 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal.

1 Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA
2 CLASS members with necessary expenses incurred in the discharge of their job
3 duties.

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

- 6 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
7 joinder of all such persons is impracticable and the disposition of their claims as
8 a class will benefit the parties and the Court;
- 9 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
10 raised in this Complaint are common to the CALIFORNIA CLASS will apply
11 uniformly to every member of the CALIFORNIA CLASS;
- 12 c. The claims of the representative PLAINTIFF are typical of the claims of each
13 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members
14 of the CALIFORNIA CLASS, was paid on a draw vs. commission compensation
15 scheme who was subjected to the DEFENDANT's deceptive practice and policy
16 which failed to provide the legally required meal and rest periods to the
17 CALIFORNIA CLASS and thereby systematically underpaid compensation to
18 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic
19 injury as a result of DEFENDANT's employment practices. PLAINTIFFS and
20 the members of the CALIFORNIA CLASS were and are similarly or identically
21 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
22 misconduct engaged in by DEFENDANT; and,
- 23 d. The representative PLAINTIFF will fairly and adequately represent and protect
24 the interest of the CALIFORNIA CLASS, and have retained counsel who are
25 competent and experienced in Class Action litigation. There are no material
26 conflicts between the claims of the representative PLAINTIFF and the members
27 of the CALIFORNIA CLASS that would make class certification inappropriate.
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Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

28. 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:

- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:
 - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or;
 - ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;
 - i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seek declaratory relief holding that the DEFENDANT'S policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

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

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

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

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

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

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

29. 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 were 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;

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

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

18 **THE CALIFORNIA LABOR SUB-CLASS**

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

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

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

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

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

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

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

- c. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- d. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- e. Whether DEFENDANT's conduct was willful.

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

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required paid rest breaks;
- e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties; and,
- f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the

1 employee all wages due without abatement, by failing to tender full payment
2 and/or restitution of wages owed or in the manner required by California law to
3 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
4 their employment.

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

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

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

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

- 7 a. Without class certification and determination of declaratory, injunctive, statutory
8 and other legal questions within the class format, prosecution of separate actions
9 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
10 the risk of:
- 11 i. Inconsistent or varying adjudications with respect to individual members
12 of the CALIFORNIA LABOR SUB-CLASS which would establish
13 incompatible standards of conduct for the parties opposing the
14 CALIFORNIA LABOR SUB-CLASS; or
 - 15 ii. Adjudication with respect to individual members of the CALIFORNIA
16 LABOR SUB-CLASS which would as a practical matter be dispositive of
17 interests of the other members not party to the adjudication or
18 substantially impair or impede their ability to protect their interests.
- 19 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
20 refused to act on grounds generally applicable to the CALIFORNIA LABOR
21 SUB-CLASS, making appropriate class-wide relief with respect to the
22 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT
23 uniformly fail to pay all wages due. Including the correct wages for all time
24 worked by the members of the CALIFORNIA LABOR SUB-CLASS as required
25 by law;
- 26 c. Common questions of law and fact predominate as to the members of the
27 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
28 violations of California Law as listed above, and predominate over any question

1 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
2 Class Action is superior to other available methods for the fair and efficient
3 adjudication of the controversy, including consideration of:

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

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

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

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

22 iii. In the context of wage litigation because a substantial number of
23 individual CALIFORNIA LABOR SUB-CLASS Members will avoid
24 asserting their legal rights out of fear of retaliation by DEFENDANT,
25 which may adversely affect an individual's job with DEFENDANT or
26 with a subsequent employer, the Class Action is the only means to assert
27 their claims through a representative; and,
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1 iv. A class action is superior to other available methods for the fair and
2 efficient adjudication of this litigation because class treatment will
3 obviate the need for unduly and unnecessary duplicative litigation that is
4 likely to result in the absence of certification of this action pursuant to
5 Cal. Code of Civ. Proc. § 382.

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

- 8 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
9 CLASS predominate over any question affecting only individual CALIFORNIA
10 LABOR SUB-CLASS Members;
- 11 b. A Class Action is superior to any other available method for the fair and efficient
12 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
13 CLASS because in the context of employment litigation a substantial number of
14 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
15 their rights individually out of fear of retaliation or adverse impact on their
16 employment;
- 17 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
18 it is impractical to bring all members of the CALIFORNIA LABOR SUB-
19 CLASS before the Court;
- 20 d. PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members,
21 will not be able to obtain effective and economic legal redress unless the action is
22 maintained as a Class Action;
- 23 e. There is a community of interest in obtaining appropriate legal and equitable
24 relief for the acts of unfair competition, statutory violations and other
25 improprieties, and in obtaining adequate compensation for the damages and
26 injuries which DEFENDANT’S actions have inflicted upon the CALIFORNIA
27 LABOR SUB-CLASS;
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- 1 f. There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of the
3 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
5 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
6 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 7 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
8 ascertainable from the business records of DEFENDANT. The CALIFORNIA
9 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were
10 employed by DEFENDANT in California during the CALIFORNIA LABOR
11 SUB-CLASS PERIOD; and
- 12 i. Class treatment provides manageable judicial treatment calculated to bring an
13 efficient and rapid conclusion to all litigation of all wage and hour related claims
14 arising out of the conduct of DEFENDANT as to the members of the
15 CALIFORNIA LABOR SUB-CLASS.

16 **FIRST CAUSE OF ACTION**

17 **UNLAWFUL BUSINESS PRACTICES**

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

19 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

23 41. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
24 Code § 17021.

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

1 Any person who engages, has engaged, or proposes to engage in unfair competition may
2 be enjoined in any court of competent jurisdiction. The court may make such orders or
3 judgments, including the appointment of a receiver, as may be necessary to prevent the
4 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).

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

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

18 45. By the conduct alleged herein, DEFENDANT's practices were deceptive and
19 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
20 mandated meal and rest periods, the required amount of compensation for missed meal and rest
21 periods and overtime and minimum wages owed, and failed to reimburse all necessary business
22 expenses incurred, due to a systematic business practice that cannot be justified, pursuant to the
23 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
24 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
25 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
26 withheld.

27 46. By the conduct alleged herein, DEFENDANT'S practices were also unlawful,
28 unfair and deceptive in that DEFENDANT'S employment practices caused PLAINTIFF and the

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with
2 DEFENDANT.

3 47. By the conduct alleged herein, DEFENDANT'S practices were also unfair and
4 deceptive in that DEFENDANT'S uniform policies, practices and procedures failed to provide
5 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
6 members as required by Cal. Lab. Code §§ 226.7 and 512.

7 48. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
8 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
9 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
10 for each workday in which a second off-duty meal period was not timely provided for each ten
11 (10) hours of work.

12 49. PLAINTIFFS further demand on behalf of themselves and on behalf of each
13 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
14 was not timely provided as required by law.

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

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

26 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
27 and do, seek such relief as may be necessary to restore to them the money and property which
28 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the

1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
2 unfair business practices, including earned but unpaid wages for all time worked.

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

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

14
15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES**
17 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

18 **(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against all**
19 **Defendants)**

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

23 56. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
25 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
26 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
27 Members.

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

1 58. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
2 commission is the minimum wage to be paid to employees, and the payment of a lesser wage
3 than the minimum so fixed is unlawful.

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

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

11 61. DEFENDANT's uniform pattern of unlawful wage and hour practices
12 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
13 whole, as a result of implementing a uniform policy and practice that denied accurate
14 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
15 CLASS in regards to minimum wage pay.

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

22 63. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
23 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
24 receive the correct minimum wage compensation for their time worked for DEFENDANT.

25 64. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and
26 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
27 than they were entitled to, constituting a failure to pay all earned wages.

28

1 65. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
2 compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
3 CLASS for the true time they worked, PLAINTIFFS and the other members of the
4 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
5 injury in amounts which are presently unknown to them and which will be ascertained
6 according to proof at trial.

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

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

22 68. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
24 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by
25 the California Labor Code and/or other applicable statutes. To the extent minimum wage
26 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
27 who have terminated their employment, DEFENDANT’s conduct also violates Labor Code §§
28 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties

1 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA
2 LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,
3 intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR
4 SUB-CLASS Members are entitled to seek and recover statutory costs.

5
6 **THIRD CAUSE OF ACTION**
7 **FAILURE TO PAY OVERTIME COMPENSATION**
8 **(Cal. Lab. Code §§510, et seq.)**
9 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and**
10 **against all Defendants)**

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

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

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

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

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

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

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

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

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

21 78. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
22 from the overtime requirements of the law. None of these exemptions are applicable to the
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
25 subject to a valid collective bargaining agreement that would preclude the causes of action
26 contained herein this Complaint. Rather, PLAINTIFF bring this Action on behalf of herself and
27 the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
28 negotiable, non-waiveable rights provided by the State of California.

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

4 80. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
5 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
6 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,
7 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR
8 SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT
9 failed to accurately record and pay as evidenced by DEFENDANT's business records and
10 witnessed by employees.

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

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

24 83. In performing the acts and practices herein alleged in violation of California labor
25 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
26 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
27 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
28 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter

disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS (Cal. Lab. Code §§ 226.7 & 512)

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

85. 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.

86. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time 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 does not prevent these employees from being relieved of all of their

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

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

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

20
21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REQUIRED REST PERIODS**
23 **(Cal. Lab. Code §§ 226.7 & 512)**

24 **(Alleged by PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and against all**
25 **Defendants)**

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

90. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees 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 from time to time. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

SIXTH CAUSE OF ACTION

FOR FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES

(Cal. Lab. Code §§ 2802)

(Alleged By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS against all Defendants)

93. 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.

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

1 An employer shall indemnify his or her employee for all necessary expenditures or
2 losses incurred by the employee in direct consequence of the discharge of his or her
3 duties, or of his or her obedience to the directions of the employer, even though
4 unlawful, unless the employee, at the time of obeying the directions, believed them
5 to be unlawful.

6 95. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
7 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS
8 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
9 benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR
10 SUB-CLASS members for expenses which included, but were not limited to, costs related to
11 using their personal cellular phones all on behalf of and for the benefit of DEFENDANT.
12 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
13 DEFENDANT to use their personal cell phones to respond to work related issues.
14 DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFFS and
15 the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their
16 personal cellular phones for DEFENDANT within the course and scope of their employment for
17 DEFENDANT. These expenses were necessary to complete their principal job duties.
18 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation.
19 Although these expenses were necessary expenses incurred by PLAINTIFFS and the
20 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and
21 reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members for these
22 expenses as an employer is required to do under the laws and regulations of California.

23 96. PLAINTIFF therefore demandS reimbursement for expenditures or losses
24 incurred by her and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their
25 job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with
26 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS

(Cal. Lab. Code § 226)

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

97. 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.

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

- a. Gross wages earned,
- b. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- c. the number of piecerate 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 of an employee identification number other than 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 99. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
2 other members of the CALIFORNIA CLASS with complete and accurate wage statements
3 which failed to show, among other things, the correct net and gross wages earned. Cal. Lab.
4 Code § 226 provides that every employer shall furnish each of his or her employees with an
5 accurate itemized wage statement in writing showing, among other things, gross wages earned
6 and all applicable hourly rates in effect during the pay period and the corresponding amount of
7 time worked at each hourly rate. Aside, from the violations listed above in this paragraph,
8 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
9 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
10 time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage
11 statements which violated Cal. Lab. Code § 226.

12 100. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
13 § 226, causing injury and damages to PLAINTIFFS and the other members of the
14 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
15 expended calculating the correct wages for all missed meal and rest breaks and the amount of
16 employment taxes which were not properly paid to state and federal tax authorities. These
17 damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of the
18 CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars
19 (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars
20 (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an
21 amount according to proof at the time of trial (but in no event more than four thousand dollars
22 (\$4,000.00) for PLAINTIFFS and each respective member of the CALIFORNIA LABOR SUB-
23 CLASS herein).

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EIGHTH CAUSE OF ACTION
FOR FAILURE TO TIMELY PAY WAGES WHEN DUE
(Cal. Lab. Code §§ 201, 202, 203)
(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all Defendants)

101. 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.

102. Cal. Lab. Code § 200 provides, in relevant part, that:

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

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

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

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

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

106. Cal. Lab. Code § 203 provides, in relevant part, that:

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

107. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS Members terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

108. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated, PLAINTIFF demands 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.

NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§ 2698 et seq.)

(Alleged by PLAINTIFF against all Defendants)

109. PLAINTIFFS reallege and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

110. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private

1 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
2 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
3 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
4 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
5 Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be
6 subject to arbitration.

7 111. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, bring this Representative Action on behalf of the State of California with respect to
10 themselves and all individuals who are or previously were employed by DEFENDANT and
11 classified as non-exempt employees in California during the time period of August 7, 2019 until
12 the present (the "AGGRIEVED EMPLOYEES").

13 112. On August 7, 2020, PLAINTIFF gave written notice by certified mail to the
14 Labor and Workforce Development Agency (the "Agency") and the employer of the
15 specific provisions of this code alleged to have been violated as required by Labor Code §
16 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
17 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
18 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
19 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
20 to all AGGRIEVED EMPLOYEES as herein defined.

21 113. The policies, acts and practices heretofore described were and are an unlawful
22 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
23 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
24 minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal
25 and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
26 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
27 including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 512, 558,
28 1194, 1197, 1197.1, 2802, and the applicable Industrial Wage Order(s), and thereby gives rise to

1 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
2 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
3 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
4 the other AGGRIEVED EMPLOYEES.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFF prays for a judgment against each Defendants, jointly and
8 severally, as follows:

9 1. On behalf of the CALIFORNIA CLASS:

- 10 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
11 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
12 b. An order temporarily, preliminarily and permanently enjoining and restraining
13 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
14 c. An order requiring DEFENDANT to pay all overtime wages and all sums
15 unlawfully withheld from compensation due to PLAINTIFFS and the other
16 members of the CALIFORNIA CLASS; and
17 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
18 for restitution of the sums incidental to DEFENDANT's violations due to
19 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

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

- 21 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
22 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
23 action pursuant to Cal. Code of Civ. Proc. § 382;
24 b. Compensatory damages, according to proof at trial, including compensatory
25 damages for minimum wage and overtime wage compensation due to
26 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
27 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD
28 plus interest thereon at the statutory rate;

- 1 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
2 the applicable IWC Wage Order;
- 3 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
4 which a violation occurs and one hundred dollars (\$100) per each member of the
5 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
6 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
7 an award of costs for violation of Cal. Lab. Code § 226; and
- 8 e. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
9 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
10 costs of suit;
- 11 f. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
12 1197; and
- 13 g. The wages of all terminated employees in the CALIFORNIA LABOR
14 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
15 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 16 3. On behalf of the State of California and with respect to all AGGRIEVED
17 EMPLOYEES:
- 18 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
19 General Act of 2004.

20 //

21 //

22 //

23 //

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28 //

1 4. On all claims:

- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and
- 4 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the
- 5 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or §
- 6 1194.

7

8 DATED: _____, 2020

9 **ZAKAY LAW GROUP, APLC**

10

11 By: _____

12 Shani O. Zakay

13 Attorney for PLAINTIFF

14

15 **DEMAND FOR A JURY TRIAL**

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

17

18 DATED: _____, 2020

19 **ZAKAY LAW GROUP, APLC**

20

21 By: _____

22 Shani O. Zakay

23 Attorney for PLAINTIFF

24

25

26

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EXHIBIT 1

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: *K&S Motors Inc*
c/o Kevin D. Hochmann
5855 Van Nuys Blvd.
Van Nuys, CA 91401



9590 9402 6111 0209 9342 24

2. Article Number (Transfer from service label)

7020 2450 0001 4373 5478

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

☐ Agent
☐ Addressee

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ d Mail | |
| ☐ d Mail Restricted Delivery (500) | |

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

EXHIBIT 4

EXHIBIT 5

JCL Law Firm
Unbilled Time
Activity: All Dates

	Activity Date	Posting	Employee	Memo/Description	Rate	Duration	Amount
Carbajal v. Keyes (002-171)							
	12/30/2020	No	Jean Claude Lapuyade	Fact Investigation - Client Meeting and Alalyzed Client Documents	700.00	4.2	2,940.00
	10/21/2021	No	Jean Claude Lapuyade	Discovery - SI	700.00	1.5	1,050.00
	10/28/2021	No	Jean Claude Lapuyade	Discovery - TCW Opposing Counsel Re Belaire and Mediation	700.00	0.6	420.00
	10/28/2021	No	Jean Claude Lapuyade	Discovery- Belaire-West Notice.	700.00	1.8	1,260.00
	10/28/2021	No	Jean Claude Lapuyade	Discovery - Revised Belaire Notice and Stip to Stay	700.00	1	700.00
	11/02/2021	No	Jean Claude Lapuyade	Pleading - Stipulation to Stay.	700.00	0.2	140.00
	11/02/2021	No	Jean Claude Lapuyade	Discovery- Correspondence regarding Belaire-West Notice.	700.00	0.2	140.00
	11/08/2021	No	Jean Claude Lapuyade	Pleading- CMC	700.00	1.2	840.00
	11/11/2021	No	Jean Claude Lapuyade	Discovery- Correspondence regarding Belaire-West Notice.	700.00	0.2	140.00
	11/19/2021	No	Jean Claude Lapuyade	Discovery- Correspondence regarding Belaire-West Notice.	700.00	0.2	140.00
	11/21/2021	No	Jean Claude Lapuyade	Discovery - R&R Belaire notice	700.00	1.5	1,050.00
	01/21/2022	No	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Mediation Data	700.00	0.4	280.00
	02/14/2022	No	Jean Claude Lapuyade	Law and Motion - Review and Revise Mediation Brief	700.00	2.2	1,540.00
	02/22/2022	No	Jean Claude Lapuyade	Attended Mediation	700.00	4.5	3,150.00
	03/28/2022	No	Jean Claude Lapuyade	Email Correspondence - Status	700.00	0.5	350.00
	03/29/2022	No	Jean Claude Lapuyade	Phone Call with client re status	700.00	0.4	280.00
	06/24/2022	No	Jean Claude Lapuyade	Emails to/from Co-Counsel Re Viking Impact	700.00	0.9	630.00
	10/05/2022	No	Jean Claude Lapuyade	Drafted, Revised and Edited Arb Demand	700.00	1.8	1,260.00
	10/07/2022	No	Jean Claude Lapuyade	Case Management - Emails to/from OC Re Service of Arb. Demand	700.00	0.3	210.00
	10/27/2022	No	Jean Claude Lapuyade	Arbitration - Emails to Selection	700.00	0.3	210.00
	11/07/2022	No	Jean Claude Lapuyade	Case Management - Emails to from C Re Arb Agreement	700.00	0.3	210.00
	06/16/2023	No	Maria Watters	File maintenance	250.00	0.5	125.00
	09/18/2023	No	Jean Claude Lapuyade	Case Management - Drafted, Revised and Edited Letter Re Liability	700.00	3.5	2,450.00
	10/26/2023	No	Jean Claude Lapuyade	Discovery - Emails to/from OC Re MTC Extensions	700.00	0.3	210.00
	11/05/2023	No	Jean Claude Lapuyade	Case Management - Emails to/from OC Re Mediation	700.00	0.5	350.00
	11/17/2023	No	Sydney Castillo-Johnson	Mediation - Emails to/from OC Re Settlement Offers	450.00	0.3	135.00
	11/17/2023	No	Sydney Castillo-Johnson	Mediation - Emails to/from OC Re Settlement Offers	450.00	0.4	180.00
	11/22/2023	No	Jean Claude Lapuyade	Case Management - Emails to/from OC Re Settlement	700.00	0.4	280.00
	03/08/2024	No	Jean Claude Lapuyade	Case Management - Emails to/from OC Re Status and Negotiations	700.00	0.7	490.00
	05/30/2024	No	Jean Claude Lapuyade	Settlement - Emails to/from OC Re SAR	700.00	0.2	140.00
Total for Carbajal v. Keyes (002-171)						31	21,300.00

EXHIBIT 6

JCL Law Firm

Transaction Report

All Dates

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	AMOUNT	BALANCE
Carbajal v. Keyes (002-171)						
10/31/2020	Journal Entry	OCT. 2020		Copies for Oct. 2020	0.40	0.40
		Postage				
10/31/2020	Journal Entry	OCT. 2020		Postage for Oct. 2020	6.90	7.30
		Postage				
12/15/2020	Expense		LWDA		75.00	82.30
12/31/2020	Journal Entry	Dec. 2020		Copies for Dec. 2020	1.40	83.70
		Postage				
12/31/2020	Journal Entry	Dec. 2020		Postage for Dec. 2020	6.90	90.60
		Postage				
01/31/2021	Journal Entry	Jan. 2021		Copies for Jan. 2021	0.20	90.80
		Postage				
02/05/2021	Check	2390	Knox Attorney Services, Inc.	Invoice No. 4333821 Re: Service On: Keyes Motors	122.75	213.55
02/05/2021	Check	2390	Knox Attorney Services, Inc.	Invoice No. 4332429 Rd: Filing Fee: Summons; Complaint; Civil Case Cover Sheet	1,686.45	1,900.00
02/28/2021	Journal Entry	Feb. 2021		Postage for Feb. 2021	1.14	1,901.14
		Postage				
03/31/2021	Journal Entry	Mar. 2021		Copies for Mar. 2021	0.90	1,902.04
		Postage				
03/31/2021	Journal Entry	Mar. 2021		Postage for Mar. 2021	1.02	1,903.06
		Postage				
04/01/2021	Expense		One Legal LLC	One Legal Order Number: 16093483 - Filing Fee: Declaration	12.35	1,915.41
04/14/2021	Check	2443	Knox Attorney Services, Inc.	Invoice No. 4336908 Re: Filing Fee: First Amended Complaint; (Proposed) Order; Declaration of Zakay	95.15	2,010.56
04/26/2021	Expense		Stanley Mosk Court		38.25	2,048.81
04/30/2021	Journal Entry	Apr. 2022		Copies for Apr. 2021	0.20	2,049.01
		Postage				
04/30/2021	Journal Entry	Apr. 2022		Postage for Apr. 2021	0.51	2,049.52
		Postage				
05/08/2021	Check	2465	Knox Attorney Services, Inc.	Invoice No. 4338545 Re: Filing Fee: Peremptory Challenge to Judicial Officer	110.75	2,160.27
06/09/2021	Expense		Case Anywhere	Invoice No. 221359	169.20	2,329.47
06/16/2021	Expense		One Legal LLC	One Legal Order Number: 16468351 - Filing Fee: Notice and Acknowledgement of Receipt, Notice of Acknowledgment of Receipt	16.68	2,346.15
06/30/2021	Journal Entry	June 2021		Copies for June 2021	0.30	2,346.45
		Postage				
06/30/2021	Journal Entry	June 2021		Postage for June 2021	0.51	2,346.96
		Postage				
07/31/2021	Journal Entry	July 2022		Copies for July 2021	0.30	2,347.26
		Postage				
08/31/2021	Journal Entry	August 2021		Copies for Aug 2021	0.20	2,347.46
		Postage				
09/08/2021	Expense		Case Anywhere	Inv. 229787	120.00	2,467.46
11/15/2021	Journal Entry	Sept 2022		Copies for Sep 2021	0.30	2,467.76
		Postage				
12/08/2021	Expense		Case Anywhere	Inv. 238164	144.00	2,611.76
12/31/2021	Journal Entry	Dec 2021		Copies for Dec 2021	0.60	2,612.36
		Postage				
01/05/2022	Check	2702	Judicate West	Invoice Number 542391 - re: Mediation	2,575.00	5,187.36
01/31/2022	Journal Entry	Jan 2022		Postage for Jan 2022	0.53	5,187.89
		Postage				
03/03/2022	Check	2743	Berger Consulting Group	Invoice No. 5655	1,000.00	6,187.89
03/31/2022	Journal Entry	Mar 2022		Copies for Mar 2022	0.20	6,188.09
		Postage				
06/09/2022	Expense		Case Anywhere	Inv. 254887	120.00	6,308.09
06/30/2022	Journal Entry	June 2022		Copies for June 2022	0.20	6,308.29
		Postage				
11/30/2023	Journal Entry	Nov. 2023		Copies for November 2023	0.80	6,309.09
		Postage				
12/31/2023	Journal Entry	Dec. 2023		Copies for December 2023	0.40	6,309.49
		Postage				
12/31/2023	Journal Entry	Dec. 2023		Postage for December 2023	0.63	6,310.12
		Postage				
Total for Carbajal v. Keyes (002-171)					\$6,310.12	
TOTAL					\$6,310.12	

EXHIBIT 7

JCL LAW FIRM, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291

FIRM RESUME

Areas of Practice: Employee Class Actions, Wage and Hour Class Actions, Civil Litigation, and Unlawful Housing Practices.

ATTORNEY BIOGRAPHIES

Jean-Claude Lapuyade, Esq.
California Bar Number 248676
Founding Partner

Biography:

Mr. Lapuyade is a San Diego based labor and employment attorney representing aggrieved California employees and the victims of unlawful housing practices throughout the State of California. Mr. Lapuyade's litigation practice focuses on representing California employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, and misclassification, wrongful termination cases and tenants in unlawful housing class actions. Mr. Lapuyade prides himself on providing his clients with aggressive, attentive and result driven representation through the litigation process, trial and arbitration. Since 2007, Mr. Lapuyade successfully recovered in excess of \$200 million in monetary awards for his clients.

Mr. Lapuyade served as co-editor of the Insurance Column for Consumer Attorneys of San Diego from 2011 to 2014. As editor, Mr. Lapuyade was responsible for publishing monthly articles in the Trial Bar News periodical analyzing complex insurance coverage issues. Mr. Lapuyade is a four-time recipient of the Super Lawyers Rising Star by Thomson Reuters. To be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. While up to 5 percent of the lawyers in a state are named to Super Lawyers, no more than 2.5 percent are named to Rising Stars.

Bar Admissions:

- California
- U.S. District Court Southern District of California
- U.S. District Court Central District of California
- U.S. District Court Eastern District of California
- U.S. District Court Northern District of California

Professional Associations:

- California Employment Lawyers Association, 2007 to Present
- Consumer Attorneys of San Diego, 2007 to 2020
- American Bar Association, Section of Litigation, Member, 2007 to 2020
- American Bar Association, Labor & Employment Section, Member, 2007 to 2020
- American Bar Association, Tort, Trial & Insurance Section, Member, 2007 to 2020
- California Bar Association, Labor & Employment Section, Member, 2007 to Present
- California Bar Association, Litigation Section, Member, 2007 to Present

Education:

- **California Western School of Law**
 - J.D. - 2006
 - Honors: Deans Merit Scholarship, California Western School of Law 2005 - 2006
- **University of Arizona**
 - B.A. - 2001
 - Major: History

Honors:

- Super Lawyers Rising Star, Thomson Reuters, 2015 - 2018
- Distinguished Advocate Award for Outstanding Oral Advocacy, 2005 - 2006

Sydney Castillo-Johnson, Esq.
California Bar Number 343881
Associate Attorney

Biography:

Ms. Castillo-Johnson is a San Diego based labor and employment attorney representing California employees throughout the state of California. Ms. Castillo-Johnson's litigation practice focuses on representing current and former employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, misclassification, and wrongful termination.

Ms. Castillo-Johnson volunteered her time at California Western School of Law first as a student intern and later as a student manager with the Community Law Project which offers legal services to the low-income community of San Diego.

Education:

- **California Western School of Law**
 - J.D.- 2022
 - Honors:
 - Dean's Honor List: Spring 2021, Fall 2021
 - Public Service Honor Society Fall 2021
 - 3L Academic Merit Scholarship
 - Dean's Diversity, Service, and Leadership Scholarship
 - Activities: Community Law Project Student Manager
- **Azusa Pacific University**
 - B.A. – 2018
 - Major: Criminal Justice

Monnett De La Torre, Esq.
California Bar Number 272884
Senior Associate

Biography:

Ms. De La Torre is a San Diego and Ventura County based labor and employment attorney representing aggrieved California employees throughout the State of California. Ms. De La Torre's litigation practice focuses on representing California employees in wage and hour class and representative actions for unpaid wages, missed meal and rest breaks, misclassification, penalties, and wrongful termination cases. Ms. De La Torre has extensive experience handling internal workplace investigations. Ms. De La Torre has handled matters before the Department of Fair Employment and Housing, Equal Employment Opportunity Commission and Department of Labor.

Ms. De La Torre is a two-time recipient of the Super Lawyers Rising Star by Thomas Reuters. To be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. While up to five percent of the lawyers in a state are named to Super Lawyers, no more than 2.5 percent are named to Rising Stars.

Bar Admissions:

- California
- U.S. District Court Southern District of California

Professional Associations:

- California Employment Lawyers Association, 2022 to Present
- Consumer Attorneys of San Diego, 2010-2015
- American Bar Association, Labor & Employment Section, Member, 2015 to Present
- California Bar Association, Labor & Employment Section, Member, 2015 to Present
- San Diego La Raza Lawyers Association, 2010-2015
- Ventura County Bar Association, 2015-Present
- Women Lawyers of Ventura County, 2015-Present

Education:

- **New England School of Law**
 - J.D.- 2010

- Honors:
 - Dean's List Consecutive years
- **University of California, San Diego**
 - B.A.- 2006
 - Major: Economics
 - Minor: Latin American Studies

Honors:

- Super Lawyers Rising Star, Thomson Reuters, 2021 and 2022
- Pacific Cost Business Times, "Top 40 under 40" Award
- Daily Transcripts "Top Young Attorney: nominee, consecutive years"

REPORTED CASES

- *Blanchette et al., v. Superior Court (GHA Homes)*, 8 Cal.App.5th 521, 2017
- *Chmurny v. State*, 392 Md. 159, 2006

EXAMPLES OF THE JCL LAW FIRM'S
REPRESENTATIVE CLASS ACTION & REPRESENTATIVE CASES

- *Ware v. Shake Shack Enterprises, LLC*, Alameda Superior Court Case No. 21CV002063 (October 19, 2023) Hon. Brad Seligman approved a \$1,330,000.00 class action and PAGA action settlement for violations of California wage and hour laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Trinh v. Precision Metal Products, Inc., et al.*, San Diego Superior Court Case No. 37-2022-00000965-CU-OE-CTL (October 16, 2023) Hon. Matthew C. Braner approved a \$450,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off the clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Anderson v. Barton Myers Associates, Inc., et al.*, Los Angeles Superior Court Case No. 21STCV43314 (October 12, 2023) Hon. Elihu M. Berl approved a \$900,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *DeSanctis v. Douglas Products and Packaging Company, LLC*, Contra Costa Superior Court Case No. C21-01874 (October 11, 2023) Hon. Charles S. Treat approved a \$372,500.00 class action and PAGA action settlement for, *inter alia*, failure to pay for all hours worked. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Jackson v. White Fir, LLC, et al.*, Sacramento Superior Court Case No. 34-2021-00301656 (October 6, 2023) Hon. Lauri A. Damrell approved a \$750,000.00 class action and PAGA action settlement for violations of California wage and hour laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Kneisly v. SR Machining, Inc., et al.*, Riverside Superior Court Case No. CVRI2201491 (October 5, 2023) Hon. Harold W. Hopp approved a \$220,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Mendez v. Bondz, Inc., et al.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0007486 (September 14, 2023) Hon. George J. Abdallah, Jr. approved a \$180,000.00 class action and PAGA action settlement for, *inter alia*, failure to comply with piece-rate laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Baray v. Curation Foods, Inc., et al.*, Santa Barbara Superior Court Case No. 21CV02834 (August 29, 2023) Hon. James F. Rigali approved a \$495,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Rodriguez, et al. v. Ferma Greenbox, Inc., et al.*, Alameda Superior Court Case No. RG21101104 (August 23, 2023) Hon. Evelio Grillo approved a \$200,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *O'Quinn v. Laugh Factory, Inc.*, Los Angeles Superior Court Case No. 19STCV28155 (August 1, 2023) Hon. Carolyn B. Kuhl approved a \$144,000.00 class action and PAGA action settlement for, *inter alia*, unlawful tip pooling. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Toler v. Total Testing Solutions, LLC*, Los Angeles Superior Court Case No. 21STCV38452 (July 27, 2023) Hon. Elihu M. Berle approved a \$160,000.00 class action and PAGA action settlement for meal and

rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.

- *Rodriguez v. EAH, Inc.*, Santa Cruz Superior Court Case No. 21CV00884 (July 25, 2023) Hon. Marjorie Carter approved a \$1,450,000.00 class action and PAGA action settlement for, *inter alia*, failure to compensate overtime and redeemed sick pay at the regular rate of pay. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Neutall v. Urban Alchemy*, San Francisco Superior Court Case No. CGC-20-588622 (July 13, 2023) Hon. Richard B. Ulmer approved a \$980,000.00 class action settlement for violations of California wage and hour laws. The Court appointed JCL Law Firm, APC as Class Counsel.
- *Rodriguez v. RM Parks Place, Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2021-6050 (June 7, 2023) Hon. Erin Guy Castillo approved a \$175,000.00 class action and PAGA action settlement for, *inter alia*, wage statement violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Chrestensen v. Northeastern Rural Health Clinics* Lassen, Superior Court Case No. 63703 (April 13, 2023) Hon. Leonard J. La Casse approved a \$270,000.00 class action and PAGA action settlement for, *inter alia*, unpaid overtime wages. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Hernandez, et al. v. Parenting Network, Inc.*, Tulare Superior Court Case No. VCU287027 (March 14, 2023) Hon. Bret Hilman approved a \$225,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Sarmiento v. Caduceus Healthcare Inc.*, San Diego Superior Court Case No. 37-2021-00002597 (March 10, 2023) Hon. Richard S. Whitney approved a \$315,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Garces, et al. v. DriverDo, LLC*, Los Angeles Superior Court Case No. 19STCV32773 (January 24, 2023) Hon. Carolyn B. Kuhl approved a \$700,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *De Jesus v. Guardian Angel Home Care, Inc.*, San Diego Superior Court Case No. 37-2020-00021049-CU-OE-CTL (July 29, 2022) Hon. Ronald F. Frazier approved a \$300,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Kaur v. Aces 2020 I, LLC, et al.*, Contra Costa Superior Court Case No. MSC20-02482 (December 22, 2022) Hon. Edward G. Weil approved a \$585,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Molina v. Hawaiian Airlines, Inc.*, Los Angeles Superior Court Case No. 20STCV28079 (November 23, 2022) Hon. Maren Nelson approved a \$250,000 class action settlement for meal and rest period violations. The JCL Law Firm, APC, represented the Plaintiff.
- *Lang Jr. v. Pathways Community Services LLC*, San Diego Superior Court Case No. 37-2019-00049969-CU-OE-CTL (September 9, 2022) Hon. James A. Mangione approved a \$160,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Martinello v. Century Wilshire, Inc.*, Los Angeles Superior Court Case No. 20STCV32613 (March 1, 2022) Hon. Carolyn Kuhl approved a \$550 billing rate and appointed Jean Claude Lapuyade, Esq. of the JCL Law Firm, APC, as Class Counsel.
- *Wilson v. Spreen Inc. (dba Spreen Honda)*, San Bernardino Superior Court Case No. CIVSB2119857 (April 6, 2022) Hon. David Cohn approved a \$300,000 PAGA action settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Ledesma v. TVJ Sons I, Inc.; Porter and Howard, Inc.* Santa Barbara Superior Court Case No. 20CV03573 (November 10, 2021) Hon. Jed Beebe approved a \$350,000 PAGA action settlement for meal and rest period violations. The JCL Law Firm, APC represented the State of California and the Aggrieved Employees.
- *Jacobs v. Rush Media Company, LLC; XLT Management Services, Inc.*, Los Angeles Superior Court Case No. 20STCV32350 (May 2, 2022) Hon. Daniel J. Buckley appointed the JCL Law Firm, APC as Class Counsel and approved a \$330,000 class action settlement for, *inter alia*, independent contractor misclassification.
- *Chavez v. HTL Conrad Domestic, LLC; HTL Conrad Domestic Employer, LLC*, San Diego Superior Court Case No. 37-2020-00016193-CU-OE-CTL (June 9, 2022) Hon. John S. Meyer approved a \$850,000 PAGA action settlement for, *inter alia*, failure to compensate overtime at the regular rate of pay. The JCL Law Firm, APC acted as representative PAGA counsel for the State of California and the Aggrieved Employees.
- *Renteria v. Love's Country Stores of California*, San Bernardino Superior Court Case No. CIVDS20164481 (June 14, 2022) Hon. David Cohn approved a \$2.2 million dollar class action and PAGA action settlement

for, *inter alia*, unpaid overtime and sick pay. The JCL Law Firm, APC acted as Class Counsel and as representative PAGA counsel for the State of California.

- *Lopez v. Adidas America, Inc.*, Ventura Superior Court Case No. 56-2021-005498444-CU-OE-VTA (April 4, 2022) Hon. Mark Borrell approved a \$1.5 million dollar class action and PAGA action settlement for, *inter alia*, inaccurate overtime calculations, and appointed the JCL Law Firm, APC as Class Counsel.
- *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No. 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a \$1.8 million dollar class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Munoz v. AMTCR*, San Bernardino Superior Court Case No. CIV-DS2001914 (August 24, 2021) Hon. David Cohn approved a \$1.8 million dollar class and PAGA settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums and appointed Jean-Claude Lapuyade, Esq. as Class Counsel.)
- *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and appointed Jean-Claude Lapuyade, Esq. as Class Counsel in a wage and hour class action settlement.)
- *Latin v. OneMain General Service Corporation*, Stanislaus County Superior Court Case No. CV-20-002498 (October 22, 2021) Hon. Stacy Speiller approved a PAGA action settlement for \$700,000 wage statement violations. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.
- *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson approved \$550 billing rate in a representative California Labor Code Private Attorney General Act settlement).
- *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)
- *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)
- *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)
- *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)
- *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)
- *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)
- *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)
- *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)
- *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL Law Firm, APC, acted as lead counsel.)
- *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)

- *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)
- *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)
- *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case No. 37-2018-00043601 (May 31, 2019 – Hon. Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)
- *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)
- *Moschetto v. Pillow Global, Inc.* San Diego Superior Court, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)
- *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)
- *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);
- *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);
- *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)
- *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)
- *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);
- *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);
- *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);
- *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);