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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN JOAQUIN**

MICHAEL GIBSON, as an individual and  
on behalf of all others similarly situated,

Plaintiff,

vs.

SOUTHWEST TRADERS  
INCORPORATED, a California  
corporation; and DOES 1 through 50,  
inclusive,

Defendants.

STK-CV- 40E -2020- 10620

**CLASS ACTION COMPLAINT FOR  
DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE §§ 510,  
558, AND 1194;
- (2) VIOLATION OF LABOR CODE §§ 226.7  
AND 512;
- (3) VIOLATION OF LABOR CODE § 226.7;
- (4) VIOLATION OF LABOR CODE §§ 201-  
203;
- (5) VIOLATION OF LABOR CODE § 2802;
- (6) VIOLATION OF LABOR CODE § 226;
- (7) VIOLATION OF BUSINESS AND  
PROFESSIONS CODE § 17200, *ET SEQ.*;  
AND
- (8) VIOLATION OF LABOR CODE § 2698,  
*ET SEQ.*

**DEMAND OVER \$25,000.00**

FILED  
SUPERIOR COURT-STOCKTON

2020 DEC 17 PM 4:02

BRANDON E. RILEY, CLERK

BY IRVING JIMENEZ  
DEPUTY

Filed by fax

1 Plaintiff Michael Gibson (“Plaintiff”) hereby submits this Class Action Complaint  
2 (“Complaint”) against Defendant Southwest Traders Incorporated and Does 1 through 50  
3 (collectively, “Defendants”), on behalf of himself and a class of all other similarly situated  
4 current and former employees of Defendants for penalties and/or damages for failure to properly  
5 calculate the regular rate of pay for purposes of paying overtime, meal and rest period premiums,  
6 and sick pay, provide off-duty meal and rest breaks, pay all wages owed upon separation of  
7 employment, reimburse business expenses, and provide accurate itemized wage statements under  
8 California Labor Code statutes, and restitution for unfair business practices in violation of  
9 Business and Professions Code § 17200, *et seq.*, as follows:

### 10 **INTRODUCTION**

11 1. This class action is within the Court’s jurisdiction under California Labor Code §§  
12 201-203, 204, 226, 226.7, 246, 510, 512, 558, 1174, 1194, 1198, 1199, 2802, and 2698, *et seq.*,  
13 Business and Professions Code § 17200, *et seq.* (the “UCL”), and the applicable Wage Orders of  
14 the California Industrial Welfare Commission (“IWC”).

15 2. This Complaint challenges systemic illegal employment practices resulting in  
16 violations of the California Labor Code and Business and Professions Code against individuals  
17 who worked for Defendants.

18 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,  
19 jointly and severally, have acted intentionally and with deliberate indifference and conscious  
20 disregard to the rights of all employees by failing to properly calculate the regular rate of pay for  
21 purposes of paying overtime, meal and rest period premiums, and sick pay, provide off-duty  
22 meal and rest breaks, pay all wages owed upon separation of employment, reimburse business  
23 expenses, and provide accurate itemized wage statements to Plaintiff and the Class.

24 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
25 have engaged in, among other things a system of willful violations of the California Labor Code  
26 and the applicable IWC Wage Orders by creating and maintaining policies, practices, and  
27 customs that knowingly deny employees the above stated rights and benefits.

28 5. The policies, practices and customs of Defendants described above and below

1 have resulted in unjust enrichment of Defendants and an unfair business advantage over  
2 businesses that routinely adhere to the strictures of the California Labor Code and the California  
3 Business and Professions Code.

#### 4 **JURISDICTION AND VENUE**

5 6. The Court has jurisdiction over the violations of the California Labor Code §§  
6 201-203, 204, 226, 226.7, 246, 510, 512, 558, 1174, 1194, 1198, 1199, 2802, and 2698, *et seq.*,  
7 the UCL, and the applicable Wage Orders.

8 7. Venue is proper in San Joaquin County because Plaintiff worked out of San  
9 Joaquin County, California.

#### 10 **PARTIES**

11 8. Plaintiff was employed by Defendants as a Commercial Class A Driver from on  
12 or about October 2017, to on or about March 27, 2020. Plaintiff worked as an hourly, non-  
13 exempt employee.

14 9. Plaintiff was and is the victims of the policies, practices, and customs of  
15 Defendant complained of in this action in ways that have deprived him of the rights guaranteed  
16 by California Labor Code §§ 201-203, 204, 226, 226.7, 246, 510, 512, 558, 1174, 1194, 1198,  
17 1199, 2802, and 2698, *et seq.*, the applicable IWC Wage Orders, and the UCL.

18 10. Plaintiff is informed and believes, and based thereon alleges, that Southwest  
19 Traders Incorporated was and is a California corporation that maintains operations in the State of  
20 California, including in Riverside County, California.

21 11. Plaintiff is informed and believes, and based thereon alleges, that at all times  
22 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,  
23 and partnerships, licensed to do business and actually doing business in the State of California.  
24 As such and based upon all the facts and circumstances incident to Defendants' business,  
25 Defendants are subject to the California Labor Code and the UCL.

26 12. Plaintiff does not know the true names or capacities, whether individual, partner  
27 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,  
28 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this

1 complaint when the true names and capacities are known. Plaintiff is informed and believes and  
2 based thereon alleges that each of said fictitious defendants was responsible in some way for the  
3 matters alleged herein and proximately caused Plaintiff and members of the general public and  
4 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

5 13. At all times herein mentioned, each defendant participated in the doing of the acts  
6 hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants,  
7 and each of them, were the agents, servants and employees of each of the other defendants, as  
8 well as the agents of all Defendants, and at all times herein mentioned, were acting within the  
9 course and scope of said agency and employment.

10 14. Plaintiff is informed and believes, and based thereon alleges, that at all times  
11 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or  
12 joint venturer of, or working in concert with each of the other co-Defendants and was acting  
13 within the course and scope of such agency, employment, joint venture, or concerted activity. To  
14 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the  
15 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting  
16 Defendants.

17 15. At all times herein mentioned, Defendants, and each of them, were members of,  
18 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course  
19 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

20 16. At all times herein mentioned, the acts and omissions of various Defendants, and  
21 each of them, concurred and contributed to the various acts and omissions of each and all of the  
22 other Defendants in proximately causing the injuries and damages as herein alleged. At all times  
23 herein mentioned, Defendants, and each of them, ratified each and every act or omission  
24 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and  
25 abetted the acts and omissions of each and all of the other Defendants in proximately causing the  
26 damages as herein alleged.

27 **CLASS ACTION ALLEGATIONS**

28 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to

1 California Code of Civil Procedure section 382. Plaintiff proposes the following class of all  
2 current and former non-exempt employees of Defendants in the State of California, who worked  
3 at any time from June 22, 2016, through the present (the “Class”). Plaintiff further proposes the  
4 following subclasses:

- 5 a. All current and former non-exempt employees of Defendants in the State  
6 of California, who earned non-discretionary remuneration, including but  
7 not limited to incentive pay such as “Safe Incentive” wages, and overtime  
8 wages during the same workweek, at any time from June 22, 2016,  
9 through the present (the “Overtime Regular Rate Sub-Class”);
- 10 b. All current and former non-exempt employees of Defendants in the State  
11 of California, who worked more than 5 hours in any shift, at any time from  
12 June 22, 2016, through the present (the “Meal Period Sub-Class”);
- 13 c. All current and former non-exempt employees of Defendants in the State  
14 of California, who worked more than 3.5 hours in any shift, at any time  
15 from June 22, 2016, through the present (the “Rest Period Sub-Class”);
- 16 d. All former non-exempt employees of Defendants in the State of California  
17 who earned non-discretionary remuneration, including but not limited to  
18 incentive pay such as “Safe Incentive” wages, and sick pay during the  
19 same workweek, and whose employment ended at any time from June 22,  
20 2017, through the present (the “Sick Pay Sub-Class”); and
- 21 e. All current and former non-exempt employees of Defendants in the State  
22 of California who earned wages at any time from June 22, 2019, through  
23 the present (the “Wage Statement Class”).

24 18. **Numerosity and Ascertainability:** The members of the Class are so numerous  
25 that joinder of all members would be impractical, if not impossible. The identity of the members  
26 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.  
27 Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) failed to pay  
28 employees overtime wages for all hours worked, or at the correct regular rate of pay that

1 included all non-discretionary remuneration in violation of Labor Code §§ 201-203, 226, 510,  
2 558, and 1194; (b) failed to provide off-duty meal periods to employees who worked 5 hours or  
3 longer in one shift and/or pay meal period premiums in lieu thereof in violation of Labor Code  
4 §§ 201-203, 226, 226.7, and 512; (c) failed to provide off-duty rest periods to employees who  
5 worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu thereof in  
6 violation of Labor Code §§ 201-203, 226, and 226.7; (d) failed to pay employees sick pay at the  
7 correct regular rate of pay that included all non-discretionary remuneration in violation of Labor  
8 Code §§ 201-204 and 246; (e) failed to reimburse business expenses in violation of Labor Code §  
9 2802; (f) failed to provide accurate, itemized wage statements in violation of Labor Code § 226;  
10 and (g) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code,  
11 and the applicable IWC Wage Orders.

12       19.     **Adequacy of Representation:** The named Plaintiff is fully prepared to take all  
13 necessary steps to represent fairly and adequately the interests of the Class defined above.  
14 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and  
15 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class  
16 actions in the past and currently have a number of wage-and-hour class actions pending in  
17 California state and federal courts.

18       20.     Defendants uniformly administered a corporate policy, practice of: (a) failing to  
19 pay employees overtime wages for all hours worked, or at the correct regular rate of pay that  
20 included all non-discretionary remuneration in violation of Labor Code §§ 201-203, 226, 510,  
21 558, and 1194; (b) failing to provide off-duty meal periods to employees who worked 5 hours or  
22 longer in one shift and/or pay meal period premiums in lieu thereof in violation of Labor Code  
23 §§ 201-203, 226, 226.7, and 512; (c) failing to provide off-duty rest periods to employees who  
24 worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu thereof in  
25 violation of Labor Code §§ 201-203, 226, and 226.7; (d) failing to pay employees sick pay at the  
26 correct regular rate of pay that included all non-discretionary remuneration in violation of Labor  
27 Code §§ 201-204 and 246; (e) failing to reimburse business expenses in violation of Labor Code  
28 § 2802; (f) failing to provide accurate, itemized wage statements in violation of Labor Code §

226; and (g) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

21. Plaintiff is informed and believes, and based thereon alleges, that Defendants had a consistent and uniform policy, practice, and procedure of willfully failing to comply with Labor Code §§ 201-203, 204, 226, 226.7, 246, 510, 512, 558, 1174, 1194, 1198, 1199, and 2802, the applicable IWC Wage Orders, and the UCL.

22. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning Defendants' policy and practice of: (a) failing to pay employees overtime wages for all hours worked, or at the correct regular rate of pay that included all non-discretionary remuneration in violation of Labor Code §§ 201-203, 226, 510, 558, and 1194; (b) failing to provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal period premiums in lieu thereof in violation of Labor Code §§ 201-203, 226, 226.7, and 512; (c) failing to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu thereof in violation of Labor Code §§ 201-203, 226, and 226.7; (d) failing to pay employees sick pay at the correct regular rate of pay that included all non-discretionary remuneration in violation of Labor Code §§ 201-204 and 246; (e) failing to reimburse business expenses in violation of Labor Code § 2802; (f) failing to provide accurate, itemized wage statements in violation of Labor Code § 226; and (g) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical manner as the Class Members. As with other non-exempt employees, Plaintiff earned non-discretionary remuneration, including without limitation incentive pay such as "Safe Incentive" wages. During workweeks when Plaintiff worked in excess of eight hours in a workday and/or forty hours in a workweek and received non-discretionary remuneration during the same workweek, Defendants failed to include any non-discretionary remuneration earned into the

1 calculation of the regular rate. Thus, Plaintiff is owed additional overtime pay based on the  
2 correct, higher regular rate of pay. Similarly, when Plaintiff received sick pay, it was disbursed at  
3 an incorrect rate of pay. Sick pay was disbursed at the base rate of pay rather than the regular  
4 rate, factoring in all non-discretionary remuneration earned during the workweek. In addition,  
5 Defendants failed to provide proper meal and rest breaks to their employees. As a pattern and  
6 practice, Defendants routinely denied meal and rest breaks to Plaintiff and other employees  
7 through scheduling and setting performance goals. In lieu of providing proper meal and rest  
8 breaks, however, Defendants did not pay meal and rest period premiums to their employees. To  
9 date, Plaintiff has yet to receive the underpaid overtime wages, sick pay, and meal and rest  
10 premium compensation owed to him. Thus, Defendants are liable for waiting time penalties  
11 under Labor Code § 203. Moreover, given the underpayment and/or nonpayment of overtime  
12 wages, sick pay, and meal and rest premiums, the wage statements provided to Plaintiff  
13 displayed inaccurate overtime rates of pay and net and gross wages earned. Moreover, the wage  
14 statements provided to Plaintiff failed to identify the accurate applicable hours worked at each  
15 hourly rate of pay and accurate total hours worked. Specifically, Plaintiff's wage statements  
16 routinely display 70 total hours worked, which were made up of 40 regular hours worked, 20  
17 overtime hours worked, and 10 double time hours worked. This amount did not reflect reality, as  
18 Defendants did not allow employees to record the exact beginning and ending time of their  
19 shifts. On multiple occasions, Plaintiff worked 15-16 hours days for 5 days a week, exceeding  
20 the 70 total hours per week displayed on his wage statements. Finally, Plaintiff was required to  
21 use his personal cell phone in order to perform his job. Defendants failed to reimburse Plaintiff  
22 the said costs. Therefore, Plaintiff is a member of the Class and has suffered the alleged  
23 violations of Labor Code §§ 201-203, 204, 226, 226.7, 246, 510, 512, 558, 1174, 1194, 1198,  
24 1199, and 2802, and the UCL.

25         24. The California Labor Code upon which Plaintiff bases these claims are broadly  
26 remedial in nature. These laws and labor standards serve an important public interest in  
27 establishing minimum working conditions and standards in California. These laws and labor  
28 standards protect the average working employee from exploitation by employers who may seek

1 to take advantage of superior economic and bargaining power in setting onerous terms and  
2 conditions of employment.

3       25.     The nature of this action and the format of laws available to Plaintiff and  
4 members of the Class identified herein make the class action format a particularly efficient and  
5 appropriate procedure to redress the wrongs alleged herein. If each employee were required to  
6 file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable  
7 advantage since it would be able to exploit and overwhelm the limited resources of each  
8 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class  
9 Member to pursue an individual remedy would also discourage the assertion of lawful claims by  
10 employees who would be disinclined to file an action against their former and/or current  
11 employer for real and justifiable fear of retaliation and permanent damage to their careers at  
12 subsequent employment.

13       26.     The prosecution of separate actions by the individual class members, even if  
14 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect  
15 to individual Class members against the Defendants and which would establish potentially  
16 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to  
17 individual Class members which would, as a practical matter, be dispositive of the interest of the  
18 other Class members not parties to the adjudications or which would substantially impair or  
19 impede the ability of the Class members to protect their interests. Further, the claims of the  
20 individual members of the Class are not sufficiently large to warrant vigorous individual  
21 prosecution considering all of the concomitant costs and expenses.

22       27.     Such a pattern, practice and uniform administration of corporate policy regarding  
23 illegal employee compensation described herein is unlawful and creates an entitlement to  
24 recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid wages,  
25 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit  
26 according to the mandate of California Labor Code §§ 218.5, 226, and 1194, the applicable IWC  
27 Wage Orders, and Code of Civil Procedure § 1021.5.

28       28.     Proof of a common business practice or factual pattern, which the named Plaintiff

1 experienced and is representative of, will establish the right of each of the members of the  
2 Plaintiff Class to recovery on the causes of action alleged herein.

3 29. The Class is commonly entitled to a specific fund with respect to the  
4 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to  
5 restitution of those funds being improperly withheld by Defendants. This action is brought for  
6 the benefit of the entire class and will result in the creation of a common fund.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE §§ 510, 558, AND 1194**

9 **(BY PLAINTIFF AND THE CLASS AND OVERTIME REGULAR RATE SUB-CLASS**  
10 **AGAINST ALL DEFENDANTS)**

11 30. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as  
12 though fully set forth herein.

13 31. This cause of action is brought pursuant to Labor Code § 510, which requires an  
14 employer to pay employees overtime at a rate of one and one-half the employee's regular rate of  
15 pay for any work in excess of eight hours in a workday or forty hours in a workweek.

16 32. As a pattern and practice, Defendants suffered and permitted employees to work  
17 in excess of eight hours in a workday and/or over forty hours in a workweek without proper  
18 overtime pay. As set forth above, Plaintiff's wage statements routinely display 70 total hours  
19 worked, which were made up of 40 regular hours worked, 20 overtime hours worked, and 10  
20 double time hours worked. This amount did not reflect reality, as Defendants did not allow  
21 employees to record the exact beginning and ending time of their shifts. On multiple occasions,  
22 Plaintiff worked 15-16 hours days for 5 days a week, exceeding the 70 total hours per week  
23 displayed on his wage statements. Separately, during workweeks when Plaintiff and Class  
24 Members worked overtime and earned non-discretionary remuneration such as incentive pay,  
25 Defendants failed to properly calculate the regular rate of pay for purposes of paying overtime.  
26 Specifically, Defendants failed to factor any non-discretionary remuneration earned into the  
27 calculation of the regular rate of pay for purposes of paying overtime wages. As a result of such  
28 policy and practice, Defendants underpaid overtime wages to Plaintiff and the Class and thus

owe additional overtime wages.

33. Such a pattern, practice, and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 218.5, 510, 558, and 1194.

34. Plaintiff is informed and believes, and based thereon alleges, that Defendants' willful failure to provide all overtime wages due and owing to Plaintiff and Class Members upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other members of the Class who have separated from employment from Defendants are entitled to compensation pursuant to Labor Code § 203.

## **SECOND CAUSE OF ACTION**

### **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

#### **(BY PLAINTIFF, THE CLASS, AND THE MEAL PERIOD SUB-CLASS AGAINST ALL DEFENDANTS)**

35. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

36. At all relevant times, Defendants failed in its affirmative obligation to ensure that Plaintiff and the Class had the opportunity to take and were provided with off-duty 30-minute meal periods in accordance with the mandates of the California Labor Code and the applicable IWC Wage Order. Specifically, as a pattern and practice, Defendants routinely denied meal breaks to Plaintiff and other employees through scheduling and setting performance goals. As a result, Plaintiff and Class Members were unable to take off-duty meal breaks.

37. Defendants further failed to pay Plaintiff and the Class meal period premium compensation, as mandated by Labor Code § 226.7. For each workday that a meal period is not provided, employees are entitled to one additional hour of pay at the employee's regular rate of pay/compensation. Throughout their employment, Plaintiff and Class Members did not receive

1 said premium compensation. As such, Plaintiff and the Class are owed additional meal period  
2 premium pay.

3 38. Such a pattern, practice and uniform administration of corporate policy as  
4 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class  
5 identified herein, in a civil action, for the unpaid balance of the premium compensation pursuant  
6 to Labor Code § 226.7, and the applicable IWC Wage Order, including interest thereon,  
7 penalties, reasonable attorneys' fees, and costs of suit.

8 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants'  
9 willful failure to provide all meal period premium wages due and owing to Plaintiff and the Class  
10 upon separation from employment results in a continued payment of wages up to thirty (30) days  
11 from the time the wages were due. Therefore, Plaintiff and members of the Class who have  
12 separated from employment are entitled to compensation pursuant to Labor Code § 203.

13 **THIRD CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE § 226.7**

15 **(BY PLAINTIFF, THE CLASS, AND THE REST PERIOD SUB-CLASS AGAINST ALL**  
16 **DEFENDANTS)**

17 40. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as  
18 though fully set forth herein.

19 41. At all relevant times, Defendants failed in their affirmative obligation to ensure  
20 that Plaintiff and the Class had the opportunity to take and were provided with off-duty 10-  
21 minute rest periods in accordance with the mandates of the California Labor Code and the  
22 applicable IWC Wage Order. Specifically, as a pattern and practice, Defendants routinely denied  
23 rest breaks to Plaintiff and other employees through scheduling and setting performance goals.  
24 As a result, Plaintiff and Class Members were unable to take off-duty rest breaks.

25 42. Defendants further failed to pay Plaintiff and the Class rest period premium  
26 compensation, as mandated by Labor Code § 226.7. For each workday that a rest period is not  
27 provided, employees are entitled to one additional hour of pay at the employee's regular rate of  
28 pay/compensation. Throughout their employment, Plaintiff and Class Members did not receive

1 said premium compensation. As such, Plaintiff and the Class are owed additional rest period  
2 premium pay.

3 43. Such a pattern, practice and uniform administration of corporate policy as  
4 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class  
5 identified herein, in a civil action, for the unpaid balance of the premium compensation pursuant  
6 to Labor Code § 226.7, and the applicable IWC Wage Order, including interest thereon,  
7 penalties, reasonable attorneys' fees, and costs of suit.

8 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants'  
9 willful failure to provide all meal period premium wages due and owing to Plaintiff and the Class  
10 upon separation from employment results in a continued payment of wages up to thirty (30) days  
11 from the time the wages were due. Therefore, Plaintiff and members of the Class who have  
12 separated from employment are entitled to compensation pursuant to Labor Code § 203.

13 **FOURTH CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE §§ 201-203**

15 **(BY PLAINTIFF, THE CLASS, AND THE SICK PAY SUB-CLASS AGAINST ALL**  
16 **DEFENDANTS)**

17 45. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as  
18 though fully set forth herein.

19 46. Labor Code § 203 provides that if an employer willfully fails to pay wages owed  
20 in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue  
21 as a penalty from the due date, and at the same rate until paid, but the wages shall not continue  
22 for more than thirty (30) days.

23 47. Labor Code § 201 provides if an employer discharges an employee, the wages  
24 earned and unpaid at the time of discharge are due and payable immediately.

25 48. Labor Code § 202 provides that an employee is entitled to receive all unpaid  
26 wages no later than 72 hours after an employee quits his or her employment, unless the employee  
27 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the  
28 employee is entitled to his or her wages at the time of quitting.

1           49. Labor Code § 246 provides that an employee is entitled to receive sick time pay.  
2 The employer shall calculate paid sick leave by using one of two calculations: (1) “Paid sick time  
3 for nonexempt employees shall be calculated in the same manner as the regular rate of pay for  
4 the workweek in which the employee uses paid sick time, whether or not the employee actually  
5 works overtime in that workweek;” or (2) “Paid sick time for nonexempt employees shall be  
6 calculated by dividing the employee’s total wages, not including overtime premium pay, by the  
7 employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

8           50. Whenever Defendants paid Plaintiff and the Class Members sick time pursuant to  
9 California Labor Code § 246, Defendants did so at the incorrect rate of pay. Defendants paid  
10 Plaintiff and the Class Members at the base hourly rate of pay, as opposed to the regular rate of  
11 pay, which takes into account all non-discretionary remuneration such as “Safe Incentive”  
12 wages, or by dividing the employees’ total wages, not including overtime premium pay, by the  
13 employees’ total hours worked in the full pay periods of the prior 90 days of employment, as  
14 required by Labor Code § 246. This resulted in the employees being underpaid for sick time and  
15 violation of California Labor Code §§ 201, 202, and 203, and other derivative Labor Code  
16 violations, because Defendants did not pay, or timely pay, Plaintiff and the Class Members all  
17 owing and unpaid wages for work performed by them during their employment and at the end of  
18 their employment.

19           51. Defendants willfully failed to pay Plaintiff and the Class Members all their wages  
20 due, as alleged hereinabove and hereinafter, upon the termination of their employment within the  
21 times prescribed by Labor Code §§ 201 and 202 and are therefore subject to a waiting time  
22 penalty. Plaintiff and the Class Members are entitled to recover from Defendants the statutory  
23 penalty for each day they were not paid at their regular hourly rate of pay, up to a thirty (30) day  
24 maximum pursuant to California Labor Code § 203.

25                           **FIFTH CAUSE OF ACTION**

26                           **VIOLATION OF LABOR CODE § 2802**

27                           **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

28           52. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as

1 though fully set forth herein.

2 53. This cause of action is brought pursuant to Labor Code § 2802, which provides  
3 that employees are entitled to be indemnified for expenses and losses in discharging the duties of  
4 their employers.

5 54. At all relevant times herein, Defendants regularly failed to reimburse and  
6 indemnify Plaintiff and Class Members for business expenses necessary for the discharge of their  
7 duties. Specifically, Defendants failed to pay Plaintiff and Class Members for work-related  
8 expenses, including without limitation, the costs incurred with the use of personal cell phones.  
9 Costs that Plaintiff and Class Members incurred in connection with the use of personal cell  
10 phones were not reimbursed.

11 55. Defendants had a uniform corporate pattern and practice and procedure regarding  
12 the above practice in violation of Labor Code § 2802.

13 56. Such a pattern, practice and uniform administration of corporate policy regarding  
14 illegal employee compensation as described herein is unlawful and creates an entitlement to  
15 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of  
16 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according  
17 to the mandate of California Labor Code § 2802.

18 **SIXTH CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE § 226**

20 **(BY PLAINTIFF, THE CLASS, AND ALL SUB-CLASSES AGAINST ALL**  
21 **DEFENDANTS)**

22 57. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as  
23 though fully set forth herein.

24 58. Defendants failed in their affirmative obligation to provide accurate itemized  
25 wage statements. Defendants, as a matter of policy and practice, did not provide accurate records  
26 in violation of Labor Code § 226 by failing to provide accurate payroll records to employees.

27 59. Here, Plaintiff and the Class were paid hourly. As such, the wage statements  
28 should have reflected the applicable hourly rates of pay, number of hours worked at each hourly

1 rate, total hours worked, and gross and net wages earned, pursuant to Labor Code section 226.  
2 However, the wage statements provided to Plaintiff and other employees failed to identify such  
3 information. More specifically, as a result of the underpayment and/or nonpayment of overtime  
4 wages, sick pay, and meal and rest premiums, the wage statements provided to Plaintiff  
5 displayed inaccurate overtime rates of pay and net and gross wages earned. In addition, the wage  
6 statements provided to Plaintiff failed to identify the accurate applicable hours worked at each  
7 hourly rate of pay and accurate total hours worked. For example, Plaintiff's wage statements  
8 routinely display 70 total hours worked, 40 regular hours worked, 20 overtime hours worked,  
9 and 10 double time hours worked. This amount did not reflect reality, as Defendants did not  
10 allow employees to record the exact beginning and ending time of their shifts. On multiple  
11 occasions, Plaintiff worked 15-16 hours days for 5 days a week, exceeding the 70 total hours per  
12 week displayed on his wage statements.

13 60. Such a pattern, practice and uniform administration of corporate policy as  
14 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class  
15 in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest  
16 thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code  
17 § 226.

### 18 **SEVENTH CAUSE OF ACTION**

#### 19 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.*** 20 **(BY PLAINTIFF AND THE CLASS AND ALL SUBCLASSES AGAINST ALL** 21 **DEFENDANTS)**

22 61. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as  
23 though fully set forth herein.

24 62. Defendants, and each of them, have engaged and continue to engage in unfair and  
25 unlawful business practices in California by practicing, employing, and utilizing the employment  
26 practices outlined above, including by: (a) failing to pay employees overtime wages at the  
27 correct regular rate of pay that included all non-discretionary remuneration in violation of Labor  
28 Code §§ 201-203, 226, 510, 558, and 1194; (b) failing to provide off-duty meal periods to

1 employees who worked 5 hours or longer in one shift and/or pay meal period premiums in lieu  
2 thereof in violation of Labor Code §§ 201-203, 226, 226.7, and 512; (c) failing to provide off-  
3 duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest  
4 period premiums in lieu thereof in violation of Labor Code §§ 201-203, 226, and 226.7; (d)  
5 failing to pay employees sick pay at the correct regular rate of pay that included all non-  
6 discretionary remuneration in violation of Labor Code §§ 201-204 and 246.

7 63. Defendants' utilization of such unfair and unlawful business practices constitutes  
8 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors.

9 64. Plaintiff seeks, individually and on behalf of other members of the Class similarly  
10 situated, full restitution of monies, as necessary and according to proof, to restore any and all  
11 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices  
12 complained of herein.

13 65. Plaintiff is informed and believes, and based thereon alleges, that at all times  
14 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,  
15 as proscribed by California Business & Professions Code § 17200, *et seq.*, including those set  
16 forth herein above thereby depriving Plaintiff and other members of the Class the minimum  
17 working condition standards and conditions due to them under the California laws as specifically  
18 described therein.

19 **EIGHTH CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

21 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**  
22 **AGAINST ALL DEFENDANTS)**

23 66. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as  
24 though fully set forth herein.

25 67. Plaintiff brings this cause of action as a proxy for the State of California and in  
26 this capacity, seeks penalties on behalf of all Aggrieved Employees from December 14, 2019,  
27 through the present, for Defendants' violations of Labor Code §§ 201-203, 204, 226, 226.7, 246,  
28 510, 512, 558, 1174, 1194, 1198, 1199, and 2802 arising from Defendants' policy and practice

of: (a) failing to pay employees overtime wages for all hours worked, or at the correct regular rate of pay that included all non-discretionary remuneration in violation of Labor Code §§ 201-203, 226, 510, 558, and 1194; (b) failing to provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal period premiums in lieu thereof in violation of Labor Code §§ 201-203, 226, 226.7, and 512; (c) failing to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu thereof in violation of Labor Code §§ 201-203, 226, and 226.7; (d) failing to pay employees sick pay at the correct regular rate of pay that included all non-discretionary remuneration in violation of Labor Code §§ 201-204 and 246; (e) failing to reimburse business expenses in violation of Labor Code § 2802; (f) failing to provide accurate, itemized wage statements in violation of Labor Code § 226; and (g) failing to permit employees to record the exact time they began and ended a work shift.

68. On or about December 14, 2020, Plaintiff sent written notice to the California Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201-203, 204, 226, 226.7, 246, 510, 512, 558, 1174, 1194, 1198, 1199, and 2802, pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). To date, the LWDA has not responded to Plaintiff’s written notice.

69. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants’ violation of Labor Code §§ 201-203, 204, 226, 226.7, 246, 510, 512, 558, 1174, 1194, 1198, 1199, and 2802, for the time period described above, on behalf of himself and other Aggrieved Employees.

#### **PRAYER FOR RELIEF**

1. WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

2. For an order certifying the proposed Class;

3. For an order appointing Plaintiff as the representative of the Class as described herein;

4. For an order appointing counsel for Plaintiff as class counsel;

1           5.       Upon the First Cause of Action, for damages and/or penalties pursuant to  
2 California Labor Code §§ 201-203, 510, 558, and 1194, and for costs and attorneys' fees;

3           6.       Upon the Second Cause of Action, for damages and/or penalties pursuant to  
4 California Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys' fees;

5           7.       Upon the Third Cause of Action, for damages and/or penalties pursuant to  
6 California Labor Code §§ 201-203 and 226.7, and for costs and attorneys' fees;

7           8.       Upon the Fourth Cause of Action, for damages and/or penalties pursuant to  
8 California Labor Code §§ 201, 202, and 203, and for costs and attorneys' fees pursuant to Labor  
9 Code § 218.5;

10          9.       Upon the Fifth Cause of Action, for damages and/or penalties pursuant to  
11 California Labor Code § 2802, and for costs and attorneys' fees;

12          10.      Upon the Sixth Cause of Action, for damages or penalties pursuant to California  
13 Labor Code § 226, and for costs and attorneys' fees;

14          11.      Upon the Seventh Cause of Action, for restitution to Plaintiff and other similarly  
15 affected members of the general public of all funds unlawfully acquired by Defendants by means  
16 of any acts or practices declared by this Court to be in violation of Business & Professions Code  
17 § 17200, *et seq.*, and for costs and attorneys' fees;

18          12.      Upon the Eighth Cause of Action, for civil penalties according to proof pursuant  
19 to Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

20          13.      On all causes of action for attorneys' fees and costs as provided by California  
21 Labor Code §§ 218.5, 226, 1194, and 2699, and Code of Civil Procedure § 1021.5; and

22          14.      For such other and further relief the Court may deem just and proper.  
23

24 DATED: December 17, 2020

DIVERSITY LAW GROUP, P.C.

25  
26 By: 

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff and the Class  
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