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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

DONALD MATHEWS, an individual,
on behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

HANSEN & ADKINS AUTO
TRANSPORT, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. CVRI2203075
Consolidated with CVRI2203224

**FIRST AMENDED CONSOLIDATED CLASS AND
REPRESENTATIVE ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246;
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*].

DEMAND FOR A JURY TRIAL

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

4
5 **THE PARTIES**

6 1. Defendant Hansen & Adkins Auto Transport, Inc. (“DEFENDANT”) is a
7 Corporation that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California.

9 2. DEFENDANT offers transportation services for new and used vehicles from
10 manufacturing plants, ports, railhead and auctions to retail dealerships.

11 3. PLAINTIFF was employed by DEFENDANT in California from April of 2016
12 to March of 2022 and was at all times classified by DEFENDANT as a non-exempt employee
13 entitled to the legally required meal and rest periods and payment of minimum and overtime
14 wages due for all time worked.

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
16 defined as all individuals who are or previously were employed by DEFENDANT in California,
17 including any employees staffed with DEFENDANT by a third party, and classified as non-
18 exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four
19 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
20 (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim
21 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of himself 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 policy and practice which
25 failed to lawfully compensate these employees. DEFENDANT’s policy and practice alleged
26 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
27 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
28 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction

1 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
2 the other members of the CALIFORNIA CLASS who have been economically injured by
3 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
4 equitable relief.

5 6. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
6 CLASS in order to fully compensate for the California labor Code violations stemming from
7 DEFENDANT's failure to indemnify employees for hand tools and equipment or, in the
8 alternative, pay two times the minimum wage, failure to provide meal and rest periods, and
9 failure to pay minimum and overtime wages to PLAINTIFFS and the CALIFORNIA CLASS.
10 DEFENDANT's uniform policy and practice alleged herein is an unlawful, unfair and deceptive
11 business practice whereby DEFENDANT retained and continues to retain wages due
12 PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the
13 other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
14 DEFENDANT in the future, relief for the named PLAINTIFFS and the other members of the
15 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
16 current unlawful conduct, and all other appropriate legal and equitable relief.

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

26 8. The agents, servants and/or employees of the Defendants and each of them acting
27 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
28 agent, servant and/or employee of the Defendants, and personally participated in the conduct

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

6 7 **THE CONDUCT**

8 9. During the CALIFORNIA CLASS PERIOD, during their employment with
9 DEFENDANT, PLAINTIFF and CALIFORNIA CLASS Members have been required to
10 supply their own hand tools and equipment to service and repair vehicles for DEFENDANT's
11 customers. Despite requiring PLAINTIFFS and CALIFORNIA CLASS Members to supply
12 their own tools and equipment to perform the job, DEFENDANT fails to pay at least two times
13 the minimum wage to PLAINTIFFS and CALIFORNIA CLASS Members as mandated by the
14 Industrial Welfare Commission Wage Orders .

15 10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
16 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
17 meaning the time during which an employee is subject to the control of an employer, including
18 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
19 and CALIFORNIA CLASS Members to work without paying them for all the time they are
20 under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to
21 work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.
22 PLAINTIFF is from time to time interrupted by work assignments while clocked out for what
23 should be PLAINTIFF's off-duty meal break. PLAINTIFF and CALIFORNIA CLASS
24 Members also worked off the clock with respect to time spent undergoing mandatory drug
25 testing or any other testing and/or examination required as a condition of employment.
26 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
27 practice of rounding the actual time worked and recorded by PLAINTIFF and CALIFORNIA
28 CLASS Members, always to the benefit of DEFENDANT, so that during the course of their

1 employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less than they would
2 have been paid had they been paid for actual recorded time rather than “rounded” time. As a
3 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeit minimum wage, overtime
4 wage compensation, and off-duty meal breaks by working without their time being correctly
5 recorded and without compensation at the applicable rates. DEFENDANT’s policy and practice
6 not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is
7 evidenced by DEFENDANT’s business records.

8 11. State and federal law provides that employees must be paid overtime and meal and
9 rest break premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and
10 other CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive pay
11 that is tied to specific elements of an employee’s performance.

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

27 13. As a result of their rigorous work schedules, PLAINTIFF and other
28 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off

1 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
2 other CALIFORNIA CLASS Members were required from time to time to perform work as
3 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
4 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
5 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in
6 which these employees were required by DEFENDANT to work ten (10) hours of work.
7 DEFENDANT also engaged in the practice of rounding the meal period times to avoid paying
8 penalties to PLAINTIFF and other CALIFORNIA CLASS Members. PLAINTIFF and other
9 members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional
10 compensation and in accordance with DEFENDANT's corporate policy and practice.

11 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
12 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
13 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
14 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
15 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
16 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
17 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
18 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
19 not provided with one hour wages in lieu thereof. Additionally, the applicable California Wage
20 Order requires employers to provide employees with off-duty rest periods, which the California
21 Supreme Court defined as time during which an employee is relieved from all work related
22 duties and free from employer control. In so doing, the Court held that the requirement under
23 California law that employers authorize and permit all employees to take rest period means that
24 employers must relieve employees of all duties and relinquish control over how employees
25 spend their time which includes control over the locations where employees may take their rest
26 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
27 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
28 other CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on

1 DEFENDANT's rule which states PLAINTIFF and other CALIFORNIA CLASS Members
2 cannot leave the work premises during their rest period.

3 15. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
4 Members as a business expense, are required by DEFENDANT to purchase and supply their
5 own tools and equipment that are necessary to perform services as auto technicians for
6 DEFENDANT. DEFENDANT violated Cal. Lab. Code. Section 2802 and IWC Wage Order
7 Section 9(B) with respect to PLAINTIFFS and CALIFORNIA CLASS Members because
8 DEFENDANT requires these employees to supply their own tools and equipment to perform
9 services for DEFENDANT but fails to reimburse for such expenses, or, in the alternative, pay
10 PLAINTIFF and CALIFORNIA CLASS Members at least two time the minimum wage. As
11 a result, in the course of their employment with DEFENDANT, PLAINTIFFS and other
12 members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
13 include, but are not limited to, costs related to the purchase of their own tools and equipment
14 all on behalf of and for the benefit of DEFENDANT.

15 16. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
16 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
17 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
18 DEFENDANT was required to pay PLAINTIFF and other CALIFORNIA CLASS Members
19 for all time worked, meaning the time during which an employee was subject to the control of
20 an employer, including all the time the employee was permitted or suffered to permit this work.
21 DEFENDANT required these employees to work off the clock without paying them for all the
22 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
23 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
24 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
25 Members forfeited time worked by working without their time being accurately recorded and
26 without compensation at the applicable minimum wage and overtime wage rates. To the extent
27 that the time worked off the clock does not qualify for overtime premium payment,
28 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of

1 Cal. Lab. Code §§ 1194, 1197, and 1197.1.

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

13 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
14 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
15 wages are paid not more than seven (7) calendar days following the close of the payroll period.
16 Cal. Lab. Code § 210 provides:

17 [I]n addition to, and entirely independent and apart from, any other penalty provided in
18 this article, every person who fails to pay the wages of each employee as provided in
19 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
20 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
for each failure to pay each employee, plus 25 percent of the amount unlawfully
withheld.

21 19. DEFENDANT from time to time failed to pay PLAINTIFF and members of the
22 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the
23 payroll period in accordance with Cal. Lab. Code § 204(d).

24 20. DEFENDANT underpaid sick pay wages to PLAINTIFF and other
25 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
26 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
27 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
28 of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS

1 Members at their base rates of pay.

2 21. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
3 employees be calculated by dividing the employee's total wages, not including overtime
4 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
5 of employment.

6 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
7 the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned non-
8 discretionary incentive wages which increased their regular rate of pay. However, when sick
9 pay was paid, it was paid at the base rate of pay for PLAINTIFF and members of the
10 CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay, as required under
11 Cal. Lab. Code Section 246.

12 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
13 other members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting
14 time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and
15 believes and based thereon alleges that such failure to pay sick pay at regular rate was willful,
16 such that PLAINTIFF and members of the CALIFORNIA CLASS whose employment has
17 separated are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

18 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
19 to collect or receive from an employee any part of wages theretofore paid by said employer to
20 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and other
21 CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from compensation
22 payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members, failed to disclose
23 all aspects of the deductions from compensation payable to PLAINTIFF and CALIFORNIA
24 LABOR SUB-CLASS Members, and thereby failed to pay these employees all wages due at
25 each applicable pay period and upon termination. PLAINTIFF and members of the
26 CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal deductions from wages
27 according to proof, related penalties, interest, attorney fees and costs.

28 25. DEFENDANT intentionally and knowingly failed to reimburse and indemnify

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

10 26. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
11 Members as a business expense, were required by DEFENDANT to use their own personal
12 cellular phones as a result of and in furtherance of their job duties as employees for
13 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
14 with the use of their personal cellular phones and personal home offices for DEFENDANT's
15 benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required
16 by DEFENDANT to use their personal cellular phones and personal home offices. As a result,
17 in the course of their employment with DEFENDANT, PLAINTIFF and other members of the
18 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
19 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
20 benefit of DEFENDANT.

21 27. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
22 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order
23 and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to
24 PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-duty
25 meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for
26 PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the
27 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties for
28 the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide

1 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business
2 records. The amount in controversy for PLAINTIFF individually does not exceed the sum or
3 value of \$75,000.

4 **JURISDICTION AND VENUE**

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

9 29. Venue is proper in this Court pursuant to California Code of Civil Procedure,
10 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
11 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
12 in this County and/or conducts substantial business in this County, and (ii) committed the
13 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.
14

15 **THE CALIFORNIA CLASS**

16 30. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
17 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
18 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
19 all individuals who are or previously were employed by DEFENDANT in California, including
20 any employees staffed with DEFENDANT by a third party, and classified as non-exempt
21 employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4)
22 years prior to the filing of this Complaint and ending on the date as determined by the Court
23 (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim
24 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

25 31. To the extent equitable tolling operates to toll claims by the CALIFORNIA
26 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
27 accordingly.
28

1 32. DEFENDANT, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and
4 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks
5 missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
6 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
7 permits or suffers to permit this work.

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

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

19 35. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
20 law by:

21 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof.
22 Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
23 deceptively having in place company policies, practices and procedures
24 that failed to record and pay PLAINTIFF and the other members of the
25 CALIFORNIA CLASS for all time worked, including minimum wages
26 owed and overtime wages owed for work performed by these employees;
27 and,

28 (b) Committing an act of unfair competition in violation of the UCL, by

1 failing to provide the PLAINTIFF and the other members of the
2 CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

1 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
2 Members.

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

5 (a) Without class certification and determination of declaratory, injunctive,
6 statutory and other legal questions within the class format, prosecution of
7 separate actions by individual members of the CALIFORNIA CLASS will
8 create the risk of:

9 1) Inconsistent or varying adjudications with respect to individual
10 members of the CALIFORNIA CLASS which would establish
11 incompatible standards of conduct for the parties opposing the
12 CALIFORNIA CLASS; and/or,

13 2) Adjudication with respect to individual members of the
14 CALIFORNIA CLASS which would as a practical matter be
15 dispositive of interests of the other members not party to the
16 adjudication or substantially impair or impede their ability to
17 protect their interests.

18 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
19 act on grounds generally applicable to the CALIFORNIA CLASS, making
20 appropriate class-wide relief with respect to the CALIFORNIA CLASS
21 as a whole in that DEFENDANT failed to pay all wages due to members
22 of the CALIFORNIA CLASS as required by law;

23 1) With respect to the First Cause of Action, the final relief on behalf
24 of the CALIFORNIA CLASS sought does not relate exclusively to
25 restitution because through this claim PLAINTIFF seeks
26 declaratory relief holding that the DEFENDANT's policy and
27 practices constitute unfair competition, along with declaratory
28 relief, injunctive relief, and incidental equitable relief as may be

necessary to prevent and remedy the conduct declared to constitute unfair competition;

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

1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

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

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

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

3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting

1 their legal rights out of fear of retaliation by DEFENDANT, which
2 may adversely affect an individual's job with DEFENDANT or
3 with a subsequent employer, the Class Action is the only means to
4 assert their claims through a representative; and,

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

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

- 12 (a) The questions of law and fact common to the CALIFORNIA CLASS
13 predominate over any question affecting only individual CALIFORNIA
14 CLASS Members because the DEFENDANT's employment practices are
15 applied with respect to the CALIFORNIA CLASS;
- 16 (b) A Class Action is superior to any other available method for the fair and
17 efficient adjudication of the claims of the members of the CALIFORNIA
18 CLASS because in the context of employment litigation a substantial
19 number of individual CALIFORNIA CLASS Members will avoid
20 asserting their rights individually out of fear of retaliation or adverse
21 impact on their employment;
- 22 (c) The members of the CALIFORNIA CLASS are so numerous that it is
23 impractical to bring all members of the CALIFORNIA CLASS before the
24 Court;
- 25 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
26 able to obtain effective and economic legal redress unless the action is
27 maintained as a Class Action;
- 28 (e) There is a community of interest in obtaining appropriate legal and

1 equitable relief for the acts of unfair competition, statutory violations and
2 other improprieties, and in obtaining adequate compensation for the
3 damages and injuries which DEFENDANT's actions have inflicted upon
4 the CALIFORNIA CLASS;

5 (f) There is a community of interest in ensuring that the combined assets of
6 DEFENDANT are sufficient to adequately compensate the members of
7 the CALIFORNIA CLASS for the injuries sustained;

8 (g) DEFENDANT has acted or refused to act on grounds generally applicable
9 to the CALIFORNIA CLASS, thereby making final class-wide relief
10 appropriate with respect to the CALIFORNIA CLASS as a whole;

11 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
12 the business records of DEFENDANT; and,

13 (i) Class treatment provides manageable judicial treatment calculated to bring
14 a efficient and rapid conclusion to all litigation of all wage and hour
15 related claims arising out of the conduct of DEFENDANT as to the
16 members of the CALIFORNIA CLASS.

17 39. DEFENDANT maintains records from which the Court can ascertain and identify
18 by job title each of DEFENDANT's employees who have been intentionally subjected to
19 DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will
20 seek leave to amend the Complaint to include any additional job titles of similarly situated
21 employees when they have been identified.

22
23 **THE CALIFORNIA LABOR SUB-CLASS**

24 40. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
25 Eighth, and Ninth causes Action on behalf of a California sub-class, defined as all members of
26 the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in
27 California, including any employees staffed with DEFENDANT by a third party, and classified
28 as non exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any time during the

1 period three (3) years prior to the filing of the complaint and ending on the date as determined
2 by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of
3 Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR
4 SUB-CLASS Members is under five million dollars (\$5,000,000.00).

5 DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission
6 (“IWC”) Wage Order requirements, and the applicable provisions of California law,
7 intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to
8 correctly calculate compensation for the time worked by PLAINTIFF and the other members
9 of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these
10 employees, even though DEFENDANT enjoyed the benefit of this work, required employees
11 to perform this work and permitted or suffered to permit this work. DEFENDANT has denied
12 these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are
13 entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable
14 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
15 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
16 accordingly.

17 41. DEFENDANT maintains records from which the Court can ascertain and identify
18 by name and job title, each of DEFENDANT’s employees who have been intentionally
19 subjected to DEFENDANT’s company policy, practices and procedures as herein alleged.
20 PLAINTIFF will seek leave to amend the complaint to include any additional job titles of
21 similarly situated employees when they have been identified.

22 42. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
23 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

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

- 26 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
27 compensation due to members of the CALIFORNIA LABOR SUB-
28 CLASS for missed meal and rest breaks in violation of the California

1 Labor Code and California regulations and the applicable California Wage
2 Order;

3 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
4 members of the CALIFORNIA LABOR SUB-CLASS with accurate
5 itemized wage statements;

6 (c) Whether DEFENDANT has engaged in unfair competition by the
7 above-listed conduct;

8 (d) The proper measure of damages and penalties owed to the members of the
9 CALIFORNIA LABOR SUB-CLASS; and,

10 (e) Whether DEFENDANT's conduct was willful.

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

13 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
14 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
15 CLASS all wages due for overtime worked, for which DEFENDANT is
16 liable pursuant to Cal. Lab. Code § 1194;

17 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
18 accurately pay PLAINTIFF and the members of the CALIFORNIA
19 LABOR SUB-CLASS the correct minimum wage pay for which
20 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

21 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
22 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
23 itemized statement in writing showing the corresponding correct amount
24 of wages earned by the employee;

25 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
26 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS with all legally required off-duty, uninterrupted thirty (30) minute
28 meal breaks and the legally required off-duty rest breaks;

- 1 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
2 when an employee is discharged or quits from employment, the employer
3 must pay the employee all wages due without abatement, by failing to
4 tender full payment and/or restitution of wages owed or in the manner
5 required by California law to the members of the CALIFORNIA LABOR
6 SUB-CLASS who have terminated their employment; and,
- 7 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
8 the CALIFORNIA LABOR SUB-CLASS members with necessary
9 expenses incurred in the discharge of their job duties.

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

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

1 identically harmed by the same unlawful, deceptive, and unfair
2 misconduct engaged in by DEFENDANT; and,

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

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

- 13 (a) Without class certification and determination of declaratory, injunctive,
14 statutory and other legal questions within the class format, prosecution of
15 separate actions by individual members of the CALIFORNIA LABOR
16 SUB-CLASS will create the risk of:

- 17 1) Inconsistent or varying adjudications with respect to individual
18 members of the CALIFORNIA LABOR SUB-CLASS which
19 would establish incompatible standards of conduct for the parties
20 opposing the CALIFORNIA LABOR SUB-CLASS; or,
21 2) Adjudication with respect to individual members of the
22 CALIFORNIA LABOR SUB-CLASS which would as a practical
23 matter be dispositive of interests of the other members not party to
24 the adjudication or substantially impair or impede their ability to
25 protect their interests.

- 26 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
27 or refused to act on grounds generally applicable to the CALIFORNIA
28 LABOR SUB-CLASS, making appropriate class-wide relief with respect

1 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
2 DEFENDANT fails to pay all wages due. Including the correct wages for
3 all time worked by the members of the CALIFORNIA LABOR SUB-
4 CLASS as required by law;

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

12 1) The interests of the members of the CALIFORNIA LABOR SUB-
13 CLASS in individually controlling the prosecution or defense of
14 separate actions in that the substantial expense of individual
15 actions will be avoided to recover the relatively small amount of
16 economic losses sustained by the individual CALIFORNIA
17 LABOR SUB-CLASS Members when compared to the substantial
18 expense and burden of individual prosecution of this litigation;

19 2) Class certification will obviate the need for unduly duplicative
20 litigation that would create the risk of:

21 A. Inconsistent or varying adjudications with respect to
22 individual members of the CALIFORNIA LABOR SUB-
23 CLASS, which would establish incompatible standards of
24 conduct for the DEFENDANT; and/or,

25 B. Adjudications with respect to individual members of the
26 CALIFORNIA LABOR SUB-CLASS would as a practical
27 matter be dispositive of the interests of the other members
28 not parties to the adjudication or substantially impair or

impede their ability to protect their interests;

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

4) 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.

47. This 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 LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;

(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 LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

(d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-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 LABOR SUB-CLASS;

(f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

(g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

(h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

(i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

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1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

3 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

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

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

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

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

18 Cal. Bus. & Prof. Code § 17203.

19 51. By the conduct alleged herein, DEFENDANT has engaged and continues to
20 engage in a business practice which violates California law, including but not limited to, the
21 applicable Industrial Wage Order(s), the California Code of Regulations and the California
22 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198,
23 2802 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for
24 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
25 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
26 unfair competition, including restitution of wages wrongfully withheld.

27 52. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
28 unfair in that these practices violate public policy, were immoral, unethical, oppressive,

1 unscrupulous or substantially injurious to employees, and were without valid justification or
2 utility for which this Court should issue equitable and injunctive relief pursuant to Section
3 17203 of the California Business & Professions Code, including restitution of wages wrongfully
4 withheld.

5 53. By the conduct alleged herein, DEFENDANT's practices are deceptive and
6 fraudulent in that DEFENDANT's uniform policy and practice fails to pay PLAINTIFFS, and
7 other members of the CALIFORNIA CLASS, minimum and overtime wages due for overtime
8 worked, fails to accurately to record the applicable rate of all time worked, and fails to supply
9 these employees with hand tools and equipment to service and repair vehicles for
10 DEFENDANT's customers, or in the alternative pay at least two times the minimum wage, due
11 to a systematic miscalculation of the overtime rate that cannot be justified, pursuant to the
12 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
13 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
14 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
15 withheld.

16 54. By the conduct alleged herein, DEFENDANT's practices were deceptive and
17 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
18 meal and rest periods, the required amount of compensation for missed meal and rest periods
19 and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse
20 al necessary business expenses incurred, and failed to provide Fair Labor Standards Act
21 overtime wages due for overtime worked as a result of failing to include non-discretionary
22 incentive compensation into their regular rates of pay for purposes of computing the proper
23 overtime pay due to a business practice that cannot be justified, pursuant to the applicable Cal.
24 Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
25 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
26 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

27 55. 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 56. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
4 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide
5 all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA
6 CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

7 57. Therefore, PLAINTIFF demands on behalf of himself 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 58. PLAINTIFF further demands on behalf of himself and each member of the
13 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
14 duty paid rest period was not timely provided as required by law.

15 59. By and through the unlawful and unfair business practices described herein,
16 DEFENDANT has obtained valuable property, money and services from PLAINTIFF 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 60. 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 61. 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 62. 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 63. 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.
10 As 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 **SECOND CAUSE OF ACTION**

16 **For Failure To Pay Minimum Wages**

17 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

18 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
19 **and Against All Defendants)**

20 64. PLAINTIFF, 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 65. 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 66. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and

1 public policy, an employer must timely pay its employees for all hours worked.

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

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

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

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

16 71. 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 PLAINTIFF 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 72. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
23 PLAINTIFF 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 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
26 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
27 Members to work without paying them for all the time they were under DEFENDANT's
28 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other

1 members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they
2 were entitled to, constituting a failure to pay all earned wages.

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

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

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

23 77. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
25 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
26 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
27 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
28 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.

THIRD CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code § 510]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

78. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs of this Complaint.

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

80. 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.

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

82. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage and overtime compensation and interest thereon, together with the

1 costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for
2 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

3 83. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
4 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
5 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
6 including overtime work.

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

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

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

23 87. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
24 from the overtime requirements of the law. None of these exemptions are applicable to the
25 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
26 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
27 subject to a valid collective bargaining agreement that would preclude the causes of action
28 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself

1 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
2 negotiable, non-waiveable rights provided by the State of California.

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

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

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

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

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

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

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

16 **FOURTH CAUSE OF ACTION**

17 **For Failure to Provide Required Meal Periods**

18 **[Cal. Lab. Code §§ 226.7 & 512]**

19 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
20 **Defendants)**

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

24 95. 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

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

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

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

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1 **FIFTH CAUSE OF ACTION**

2 **For Failure to Provide Required Rest Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

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

9 99. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
10 time to time required to work in excess of four (4) hours without being provided ten (10) minute
11 rest periods. Further, these employees from time to time were denied their first rest periods of
12 at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
13 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
14 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
15 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
16 CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages
17 in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
18 CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest
19 periods by DEFENDANT and DEFENDANT's managers.

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

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

1 **SIXTH CAUSE OF ACTION**

2 **For Failure to Provide Accurate Itemized Statements**

3 **[Cal. Lab. Code § 226]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

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

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

- 12 (1) gross wages earned,
13 (2) total hours worked by the employee, except for any employee whose
14 compensation is solely based on a salary and who is exempt from payment of
15 overtime under subdivision (a) of Section 515 or any applicable order of the
16 Industrial Welfare Commission,
17 (3) the number of piecerate units earned and any applicable piece rate if the employee
18 is paid on a piece-rate basis,
19 (4) all deductions, provided that all deductions made on written orders of the
20 employee may be aggregated and shown as one item,
21 (5) net wages earned,
22 (6) the inclusive dates of the period for which the employee is paid,
23 (7) the name of the employee and his or her social security number, except that by
24 January 1, 2008, only the last four digits of his or her social security number or an
25 employee identification number other than a social security number may be shown on
26 the itemized statement,
27 (8) the name and address of the legal entity that is the employer, and
28 (9) all applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee.

104. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
wage statements which failed to show, among other things, the correct gross and net wages
earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
employees with an accurate itemized wage statement in writing showing, among other
things, gross wages earned and all applicable hourly rates in effect during the pay period and
the corresponding amount of time worked at each hourly rate. Aside, from the violations

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

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

18
19 **SEVENTH CAUSE OF ACTION**

20 **For Failure to Reimburse Employees for Required Expenses**

21 **[Cal. Lab. Code § 2802]**

22 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
23 **Defendants)**

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

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

28 An employer shall indemnify his or her employee for all necessary

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

5 108. In the course of their employment PLAINTIFFS and other CALIFORNIA
6 LABOR SUB-CLASS Members as a business expense, are required by DEFENDANT to
7 purchase and supply their own tools and equipment that are necessary to perform services as
8 auto technicians for DEFENDANT. DEFENDANT violated Cal. Lab. Code. Section 2802
9 and IWC Wage Order Section 9(B) with respect to PLAINTIFFS and the CALIFORNIA
10 LABOR SUB-CLASS Members because DEFENDANT requires these employees to supply
11 their own tools and equipment to perform services for DEFENDANT but fails to reimburse
12 for such expenses, or, in the alternative, pay PLAINTIFF and CALIFORNIA LABOR SUB-
13 CLASS Members at least two time the minimum wage. As a result, in the course of their
14 employment with DEFENDANT, PLAINTIFFS and other members of the CALIFORNIA
15 LABOR SUB-CLASS incurred unreimbursed business expenses which include, but are not
16 limited to, costs related to the purchase of their own tools and equipment all on behalf of and
17 for the benefit of DEFENDANT.

18 109. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
19 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
20 CLASS members for required expenses incurred in the discharge of their job duties for
21 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
22 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
23 limited to, costs related to using their personal cellular phones on behalf of and for the
24 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR
25 SUB-CLASS Members were required by DEFENDANT to use their personal cellular
26 phones and personal home offices in order to perform work related job tasks.
27 DEFENDANT's policy and practice was to not reimburse PLAINTIFF and the
28 CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their
personal cellular phones for DEFENDANT within the course and scope of their employment

1 for DEFENDANT. These expenses were necessary to complete their principal job duties.
2 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
3 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF
4 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify
5 and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
6 these expenses as an employer is required to do under the laws and regulations of California.

7 110. PLAINTIFF therefore demands reimbursement for expenditures or losses
8 incurred by himself and the CALIFORNIA LABOR SUB-CLASS members in the discharge
9 of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
10 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

11 **EIGHTH CAUSE OF ACTION**

12 **For Failure to Pay Wages When Due**

13 **[Cal. Lab. Code §§ 201, 202, 203]**

14 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
15 **and Against All Defendants)**

16 111. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
17 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
18 paragraphs of this Complaint.

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

20 As used in this article:

21 (a) "Wages" includes all amounts for labor performed by employees of
22 every description, whether the amount is fixed or ascertained by the
23 standard of time, task, piece, Commission basis, or other method of calculation.

24 (b) "Labor" includes labor, work, or service whether rendered or
25 performed under contract, subcontract, partnership, station plan, or other
26 agreement if the labor to be paid for is performed personally by the person
27 demanding payment.

28 113. 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."

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

1 If an employee not having a written contract for a definite period quits his
2 or her employment, his or her wages shall become due and payable not
3 later than 72 hours thereafter, unless the employee has given 72 hours
4 previous notice of his or her intention to quit, in which case the employee
5 is entitled to his or her wages at the time of quitting. Notwithstanding any
6 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.

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

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

10 If an employer willfully fails to pay, without abatement or reduction, in
11 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
12 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.

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

16 118. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
17 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated
18 and who have not been fully paid their wages due to them, PLAINTIFF demands thirty days
19 of pay as penalty for not paying all wages due at time of termination for all employees who
20 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and
21 demands an accounting and payment of all wages due, plus interest and statutory costs as
22 allowed by law.

23 **NINTH CAUSE OF ACTION**

24 **For Failure to Pay Sick Pay Wages**

25 **[Cal. Lab. Code §§ 201-204, 210, 233, 246]**

26 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
27 **and Against All Defendants)**

28 119. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-

1 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
2 paragraphs of this Complaint.

3 120. Cal Lab. Code § 233 provides that an employer must permit an employee to
4 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
5 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
6 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
7 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
8 right to sick pay wages, which an employer must calculate and compensate based on one of
9 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
10 same manner as the regular rate of pay for the workweek in which the employee uses paid
11 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
12 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
13 total wages, not including overtime premium pay, by the employee's total hours worked in
14 the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and
15 233, employees may sue to recover underpaid sick pay wages as damages.

16 121. As a matter of policy and practice, DEFENDANT pays sick pay wages to
17 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS at the
18 incorrect rate of pay. PLAINTIFF and the other members of the CALIFORNIA LABOR-
19 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn
20 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
21 wages to PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS
22 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-
23 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
24 employee's total wages, not including overtime premium pay, by the employee's total hours
25 worked in the full pay periods of the prior 90 days of employment. As a result,
26 DEFENDANT underpaid sick pay wages to PLAINTIFF and the other members of the
27 CALIFORNIA LABOR-SUB-CLASS.

28 122. Cal. Lab. Code § 204 provides that wages generally are due and payable twice

1 during each calendar month and are to be paid no later than the payday for the next regular
2 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically
3 requires that, upon use of accrued sick leave, vested sick pay wages are due and to be paid
4 no later than the payday for the next regular payroll period after accrued sick leave is used
5 as paid sick time. Similarly, Cal. Lab. Code § 201 provides that if an employer discharges
6 an employee, wages earned and unpaid at the time of discharge are due and payable
7 immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive all
8 unpaid wages no later than 72 hours after an employee quits his or her employment, unless
9 the employee has given 72-hour notice of his or her intention to quit, in which case the
10 employee is entitled to his or her wages at the time of quitting. The Labor Code penalizes
11 untimely payments. For example, Cal. Lab. Code § 203 provides that if an employer
12 willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the
13 wages of the employee shall continue as a penalty from the due date, and at the same rate
14 until paid, but the wages shall not continue for more than thirty (30) days. Likewise, Cal.
15 Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and untimely
16 payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may
17 sue to recover applicable penalties.

18 123. As alleged herein and as a matter of policy and practice, DEFENDANT
19 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other
20 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
21 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246,
22 among other Labor Code provisions. PLAINTIFF is informed and believes that
23 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
24 mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the
25 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
26 include those benefits to which an employee is entitled as a part of his or her compensation,
27 including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth*
28 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT

1 willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA
2 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
3 penalties.

4 124. Such a pattern, practice, and uniform administration of corporate policy is
5 unlawful and entitles PLAINTIFF and the other members of the CALIFORNIA LABOR-
6 SUB-CLASS to underpaid sick pay wages, including interest thereon, applicable penalties,
7 attorney's fees, and costs of suit.

8
9 **TENTH CAUSE OF ACTION**

10 **For Violation of the Private Attorneys General Act**

11 **[Cal. Lab. Code §§ 2698, et seq.]**

12 **(By PLAINTIFF and Against All Defendants)**

13 125. PLAINTIFF incorporates by reference the allegations set forth in the prior
14 paragraphs as though fully set forth at this point.

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

25 127. PLAINTIFF, and such persons that may be added from time to time who
26 satisfy the requirements and exhaust the administrative procedures under the Private
27 Attorney General Act, brings this Representative Action on behalf of the State of California
28 with respect to himself and all individuals who are or previously were employed by

1 DEFENDANT in California, including any employees staffed with DEFENDANT by a
2 third party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES")
3 during the time period of May 19, 2021 until a date as determined by the Court (the "PAGA
4 PERIOD").

5 128. On May 19, 2022, PLAINTIFF gave written notice by electronic mail to the
6 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
7 employer of the specific provisions of this code alleged to have been violated as required by
8 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
9 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
10 now commence a representative civil action under PAGA pursuant to Section 2699 as the
11 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
12 defined.

13 129. The policies, acts and practices heretofore described were and are an unlawful
14 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
15 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
16 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
17 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
18 required expenses, and (f) failed to provide wages when due, all in violation of the
19 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218,
20 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
21 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
22 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
23 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
24 Labor Code Private Attorney General Act of 2004 as the representative of the State of
25 California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED
26

27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 EMPLOYEES.

2 130. All of the conduct and violations alleged herein occurred during the PAGA
3 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
4 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
5 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*,
6 30 Cal.App.5th 504 (2018).

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
10 severally, as follows:

11 1. On behalf of the CALIFORNIA CLASS:

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

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

- 23 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth,
24 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
25 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
26 B) Compensatory damages, according to proof at trial, including compensatory
27 damages for minimum and overtime compensation due PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable

CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;

F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,

G) The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

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

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

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 cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

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Dated: August 11, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Norman B. Blumenthal
Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

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

Dated: August 11, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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Kyle R. Nordrehaug
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