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THOMAS CROSS, individually and on  
8 behalf of other persons similarly situated and  
aggrieved

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SACRAMENTO

BY FAX

12 THOMAS CROSS, an individual, on behalf of  
himself and on behalf of other persons  
13 similarly situated and aggrieved,

14 Plaintiff,

15 vs.

16 TRICOLOR AUTO GROUP, LLC, a Delaware  
corporation; TRICOLOR CALIFORNIA AUTO  
GROUP, LLC, a Delaware corporation; and  
17 DOES 1 through 50, inclusive,

18 Defendants.

CASE NO.:

**CLASS ACTION COMPLAINT:**

1. Failure to Provide Required Meal Periods;
2. Failure to Provide Required Rest Periods;
3. Failure to Pay Overtime Wages;
4. Failure to Pay Minimum Wages;
5. Failure to Pay All Wages Due to Discharged and Quitting Employees;
6. Failure to Maintain Required Records;
7. Failure to Furnish Accurate Itemized Wage Statements;
8. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties;
9. Unfair and Unlawful Business Practices.

**REPRESENTATIVE ACTION:**

10. Penalties under the Labor Code Private Attorneys General Act, as Representative Action

**DEMAND FOR JURY TRIAL**

1 Plaintiff THOMAS CROSS (“PLAINTIFF”), an individual, demanding a jury trial, on  
2 behalf of himself and other persons similarly situated and aggrieved, hereby alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of himself and all other similarly-situated  
5 current and former non-exempt employees of Defendants, TRICOLOR AUTO GROUP, LLC  
6 (“TRICOLOR AUTO GROUP”) and TRICOLOR CALIFORNIA AUTO GROUP LLC  
7 (“TRICOLOR CALIFORNIA AUTO GROUP”), and DOES 1 through 50 inclusive (collectively,  
8 “DEFENDANTS”) in the State of California during the relevant statutory period to recover  
9 penalties arising from DEFENDANTS’ failure to provide employees meal and rest periods (or  
10 compensation therefore) as required under California law, failure to provide minimum and  
11 overtimes wages for all hours worked, failure to timely pay wages during employment, failure to  
12 pay wages due upon separation, failure to maintain required records, failure to provide accurate  
13 itemized wage statements, and failure to indemnify employees for necessary expenditures and/or  
14 losses incurred the discharge of their duties. PLAINTIFF also seeks penalties, interest, attorneys’  
15 fees, costs and expenses, and equitable, restitutionary and injunctive relief.

16 **JURISDICTION AND VENUE**

17 2. The Superior Court of the State of California has jurisdiction in this matter because  
18 PLAINTIFF is a citizen and resident of the State of California and DEFENDANTS are citizens  
19 and residents of, and/or regularly conduct business in California. Further, no federal question is at  
20 issue because the claims are based solely on California law.

21 3. Venue is proper in this judicial district and the County of Sacramento, California  
22 because DEFENDANTS maintain offices and facilities and transact business in the County of  
23 Sacramento, and DEFENDANTS’ illegal policies and practices which are the subject of this  
24 action were applied, at least in part, to PLAINTIFF and other persons similarly situated in the  
25 County of Sacramento.

26 **PLAINTIFF**

27 4. PLAINTIFF is a citizen and resident of the State of California. In approximately  
28 April 2021, PLAINTIFF began working for TRICOLOR AUTO GROUP and TRICOLOR

1 CALIFORNIA AUTO GROUP as an automotive technician in Sacramento, California.  
2 PLAINTIFF was terminated in March 2022, but at all times material to this complaint was  
3 employed by DEFENDANTS in the State of California as a non-exempt employee.

4 5. PLAINTIFF brings this action on behalf of himself and the following similarly  
5 situated class of individuals (“CLASS MEMBERS”): all current and former non-exempt  
6 employees of DEFENDANTS in the State of California at any time within the period beginning  
7 four (4) years prior to the filing of this action and ending at the time this action settles or proceeds  
8 to final judgment (the “CLASS PERIOD”). PLAINTIFF reserves the right to name additional  
9 class representatives.

#### 10 **DEFENDANTS**

11 6. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT  
12 TRICOLOR AUTO GROUP is, and at all times relevant hereto was, a Delaware corporation.  
13 PLAINTIFF is further informed and believes, and thereon alleges, that TRICOLOR AUTO  
14 GROUP is authorized to and does conduct business in the State of California. Specifically,  
15 TRICOLOR AUTO GROUP maintains offices and facilities and conducts business in, and  
16 engages in illegal payroll practices or policies in the County of Sacramento, State of California.

17 7. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT  
18 TRICOLOR CALIFORNIA AUTO GROUP is, and at all times relevant hereto was, a Delaware  
19 corporation. PLAINTIFF is further informed and believes, and thereon alleges, that TRICOLOR  
20 CALIFORNIA AUTO GROUP is authorized to and does conduct business in the State of  
21 California. Specifically, TRICOLOR CALIFORNIA AUTO GROUP maintains offices and  
22 facilities and conducts business in, and engages in illegal payroll practices or policies in the  
23 County of Sacramento, State of California.

24 8. The true names and capacities of DOES 1 through 50, inclusive, are unknown to  
25 PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under fictitious  
26 names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant  
27 designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and  
28 that PLAINTIFF and other CLASS MEMBERS’ injuries and damages, as alleged herein, were

1 proximately caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the  
2 court to amend this Complaint to allege their true names and capacities of such DOE Defendants  
3 when ascertained.

4 9. At all relevant times herein, DEFENDANTS were the joint employers of  
5 PLAINTIFF and other CLASS MEMBERS. PLAINTIFF is informed and believes, and thereon  
6 alleges, that at all times material to this Complaint DEFENDANTS were the alter egos, divisions,  
7 affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities,  
8 co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or  
9 ostensible, of each other. Each Defendant was completely dominated by his, her or its co-  
10 Defendant, and each was the alter ego of the other.

11 10. At all relevant times herein, PLAINTIFF and CLASS MEMBERS were employed  
12 by DEFENDANTS under employment agreements that were partly written, partly oral, and partly  
13 implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them,  
14 acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFF  
15 and other CLASS MEMBERS all wages earned and due, through methods and schemes which  
16 include, but are not limited to, failing to pay overtime premiums; failing to provide rest and meal  
17 periods; failing to properly maintain records; failing to provide accurate itemized statements for  
18 each pay period; failing to properly compensate PLAINTIFF and CLASS MEMBERS for  
19 necessary expenditures; and requiring, permitting or suffering the employees to work off the  
20 clock, in violation of the California Labor Code and the applicable Welfare Commission ("IWC")  
21 Orders.

22 11. PLAINTIFF is informed and believes, and thereon alleges, that each and every one  
23 of the acts and omissions alleged herein were performed by, and/or attributable to, all  
24 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control  
25 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course  
26 and scope of said agency, employment and/or direction and control.

27 12. Pursuant to California Labor Code § 558.1, DEFENDANTS and any person acting  
28 on behalf of any of the DEFENDANTS, are liable for violating, or causing to violate, any

1 provision regulating minimum wages or hours and days of work in any order of the Industrial  
2 Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1994, or 2802.

3 13. As a direct and proximate result of the unlawful actions of DEFENDANTS,  
4 PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings  
5 in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this  
6 Court.

### 7 **FACTUAL ALLEGATIONS**

8 14. Throughout PLAINTIFF's employment, PLAINTIFF and other similarly situated  
9 and aggrieved employees were denied off-duty, uninterrupted meal and rest breaks. PLAINTIFF  
10 and other similarly situated aggrieved employees were given short meal breaks, provided meal  
11 breaks late (after the fifth hour of work for the first meal period and/or after the tenth hour of  
12 work for the second meal period), had their meal breaks interrupted, and/or were denied their  
13 meal breaks entirely.

14 15. Similarly, DEFENDANTS consistently failed to authorize and permit PLAINTIFF  
15 and other similarly situated and aggrieved employees off-duty rest breaks, including failing to  
16 authorize and permit PLAINTIFF and other similarly situated aggrieved employees to take rest  
17 breaks in the middle of each work period insofar as practicable.

18 16. DEFENDANTS did not compensate PLAINTIFF and other similarly situated and  
19 aggrieved employees for their missed meal and rest breaks.

20 17. Further, PLAINTIFF and other similarly situated and aggrieved employees often  
21 worked either more than 8 hours per day and/or more than 40 hours per week, but  
22 DEFENDANTS did not compensate them for their overtime work.

23 18. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS  
24 frequently provided non-compliant, inaccurate wage statements and failed to properly maintain  
25 records for PLAINTIFF and other similarly situated and aggrieved employees as a result of these  
26 unlawful practices. Moreover, DEFENDANTS did not timely pay PLAINTIFF and other  
27 similarly situated and aggrieved employees for all hours worked when it failed to pay for the  
28 missed meal and rest break periods, overtime wages, and/or for forcing PLAINTIFF and other

1 similarly situated and aggrieved employees to work off-the-clock without pay.

2 19. Additionally, PLAINTIFF and other similarly situated and aggrieved employees  
3 were forced to pay out of pocket for business expenses such as cell phones, gas, and other  
4 employment-related expenses. DEFENDANTS did not indemnify PLAINTIFF and other  
5 similarly situated and aggrieved employees for these expenses.

6 **CLASS ACTION ALLEGATIONS**

7 20. This action is appropriately suited for a Class Action because:

8 a. The potential class is a significant number. Joinder of all current and  
9 former employees individually would be impractical.

10 b. This action involves common questions of law and fact to the potential  
11 class because the action focuses on DEFENDANTS' systematic course of illegal payroll practices  
12 and policies, which was applied to all non-exempt employees in violation of the Labor Code, the  
13 applicable IWC Wage Order, and the Business and Professions Code which prohibits unfair  
14 business practices arising from such violations.

15 c. PLAINTIFF's claims are typical of the class because DEFENDANTS  
16 subjected all non-exempt employees to identical violations of the Labor Code, the applicable  
17 IWC wage order, and the Business and Professions Code.

18 d. PLAINTIFF will fairly and adequately protect the interest of all CLASS  
19 MEMBERS because it is in his best interest to prosecute the claims alleged herein to obtain full  
20 compensation due to them for all services rendered and hours worked.

21 e. A class action is superior to other available methods for fairly and  
22 efficiently adjudicating the controversy.

23 **FIRST CAUSE OF ACTION**

24 **Failure to Provide Required Meal Periods**

25 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 4-2001, § 11]**

26 **(Against all DEFENDANTS)**

27 21. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the  
28 factual allegations in the foregoing paragraphs.

1           22.     During the CLASS PERIOD, as part of DEFENDANTS' illegal policies and  
2 practices to deprive their current and former non-exempt employees all wages earned and due,  
3 DEFENDANTS required, suffered or permitted PLAINTIFF and CLASS MEMBERS to take less  
4 than the 30-minute meal period, or to work through them, and have failed to otherwise provide  
5 the required meal periods to PLAINTIFF and CLASS MEMBERS pursuant to Labor Code §§  
6 226.7 and 512 and IWC Order No. 4-2001, § 11.

7           23.     DEFENDANTS further violated Labor Code §§ 226.7 and 512 and IWC Wage  
8 Order No. 4-2001, §11 by failing to compensate PLAINTIFF and CLASS MEMBERS who were  
9 not provided with a meal period, in accordance with the applicable IWC Wage Order, one  
10 additional hour of compensation at each employee's regular rate of pay for each workday that a  
11 meal period was not provided.

12           24.     DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194,  
13 1197, and IWC Wage Order No. 4-2001 by failing to compensate PLAINTIFF and CLASS  
14 MEMBERS for all hours worked during their meal periods.

15           25.     As a proximate result of the aforementioned violations, PLAINTIFF and CLASS  
16 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages  
17 earned and due, interest, penalties, expenses, and costs of suit.

18                   **SECOND CAUSE OF ACTION**

19                   **Failure to Provide Required Rest Periods**

20                   **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 4-2001, § 12]**

21                   **(Against all DEFENDANTS)**

22           26.     PLAINTIFF incorporates herein by specific reference, as though fully set forth, the  
23 factual allegations in the foregoing paragraphs.

24           27.     At all times relevant herein, as part of DEFENDANTS' illegal policies and  
25 practices to deprive their current and former non-exempt employees all wages earned and due,  
26 DEFENDANTS failed to provide rest periods to PLAINTIFF and CLASS MEMBERS as  
27 required under Labor Code § 226.7 and 512, and IWC Wage Order No. 4-2001, § 12.

28           28.     DEFENDANTS further violated Labor Code § 226.7 and IWC Wage Order No. 4-

2001, § 12 by failing to pay PLAINTIFF and CLASS MEMBERS who were not provided with a rest period, in accordance with the applicable IWC Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a rest period was not provided.

29. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses, and costs of suit.

### **THIRD CAUSE OF ACTION**

#### **Failure to Pay Overtime Wages**

**[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 4-2001, § 3]**

**(Against all DEFENDANTS)**

30. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the factual allegations in the foregoing paragraphs.

31. Pursuant to Labor Code §§ 510 and 1194 and IWC Wage Order No. 4-2001, § 3, DEFENDANTS are required to compensate PLAINTIFF and CLASS MEMBERS for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

32. PLAINTIFF and CLASS MEMBERS are current and former non-exempt employees entitled to the protections of California Labor Code §§ 510 and 1194 and IWC Wage Order No. 4-2001. During the CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFF and CLASS MEMBERS for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by Labor Code §§ 510, 1194, and IWC Wage Order No. 4-2001, § 3; requiring, suffering or permitting PLAINTIFF and CLASS MEMBERS to work off the clock; requiring, permitting or suffering

1 PLAINTIFF and CLASS MEMBERS to work through meal breaks; illegally and inaccurately  
2 recording time in which PLAINTIFF and CLASS MEMBERS worked; failing to properly  
3 maintain PLAINTIFF's and CLASS MEMBERS' records; failing to provide accurate itemized  
4 wage statements to PLAINTIFF for each pay period; and other methods to be discovered.

5 33. In violation of California law, DEFENDANTS have knowingly and willfully  
6 refused to perform their obligations to compensate PLAINTIFF and CLASS MEMBERS for all  
7 wages earned and all hours worked. As a proximate result, PLAINTIFF and CLASS MEMBERS  
8 have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such  
9 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel  
10 DEFENDANTS to fully perform their obligations under state law, all to their respective damages  
11 in amounts according to proof at time of trial, and within the jurisdiction of this Court.

12 34. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,  
13 1194, 1198 and IWC Wage Order No. 4-2001, § 3. Therefore, pursuant to California Labor Code  
14 §§ 200, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code  
15 and IWC Wage Orders, PLAINTIFF and CLASS MEMBERS are entitled to recover the unpaid  
16 balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorneys' fees,  
17 expenses, and costs of suit.

#### 18 **FOURTH CAUSE OF ACTION**

##### 19 **Failure to Pay Minimum Wages**

20 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order No. 4-2001, § 4]**

21 **(Against all DEFENDANTS)**

22 35. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the  
23 factual allegations in the foregoing paragraphs.

24 36. Pursuant to California Labor Code §§ 1194 and 1197 and IWC Wage Order No. 4-  
25 2001, § 4, payment to an employee of less than the applicable minimum wage for all hours  
26 worked in a payroll period is unlawful.

27 37. During the CLASS PERIOD and in violation of California Labor Code §§ 1194  
28 and 1197 and IWC Wage Order No. 4-2001, § 4, DEFENDANTS failed to pay PLAINTIFF and

1 CLASS MEMBERS the applicable minimum wages for all hours worked in a payroll period by,  
2 among other things: requiring, suffering or permitting PLAINTIFF and CLASS MEMBERS to  
3 work off the clock; requiring, suffering or permitting PLAINTIFF and CLASS MEMBERS to  
4 work through meal and rest breaks; illegally and inaccurately recording time in which  
5 PLAINTIFF and CLASS MEMBERS worked; failing to properly maintain PLAINTIFF's and  
6 CLASS MEMBERS' records; failing to provide accurate itemized wage statements to  
7 PLAINTIFF and CLASS MEMBERS for each pay period; and other methods to be discovered.

8 38. DEFENDANTS' conduct described herein violates California Labor Code §§  
9 1194, 1197, and IWC Wage Order No. 4-2001, § 4. As a proximate result of the aforementioned  
10 violations, PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to  
11 proof at trial. Therefore, pursuant to California Labor Code §§ 200, 226, 558, 1194, 1197.1, and  
12 other applicable provisions under the Labor Code and IWC Wage Orders, PLAINTIFF and  
13 CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to them by  
14 DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

#### 15 **FIFTH CAUSE OF ACTION**

#### 16 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

17 **[Cal. Labor Code § 201, 202, 203]**

18 **(Against all DEFENDANTS)**

19 39. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the  
20 factual allegations in the foregoing paragraphs.

21 40. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are  
22 required to pay all earned and unpaid wages to an employee who is discharged. California Labor  
23 Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued  
24 and unpaid at the time of discharge are due and payable immediately.

25 41. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are  
26 required to pay all accrued wages due to an employee no later than 72 hours after the employee  
27 quits his or her employment, unless the employee provided 72 hours previous notice of his or her  
28 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

42. California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to 30 workdays.

43. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay accrued wages and other compensation to PLAINTIFF and CLASS MEMBERS in accordance with California Labor Code §§ 201 and 202.

44. As a result, PLAINTIFF and CLASS MEMBERS are entitled to all available statutory penalties, including the waiting time penalties provided in California Labor Code § 203, together with interest thereon, as well as other available remedies.

45. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF and CLASS MEMBERS have been deprived of compensation in an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code §§ 1194 and 2699.

## **SIXTH CAUSE OF ACTION**

## Failure to Maintain Required Records

**[Cal. Labor Code §§ 226(a), 1174(d); IWC Wage Order No. 4-2001, § 7]**

**(Against all DEFENDANTS)**

46. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the factual allegations in the foregoing paragraphs.

47. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies and practices to deprive PLAINTIFF and CLASS MEMBERS of all wages earned and due, DEFENDANTS knowingly and intentionally failed to maintain records as required under Labor Code §§ 226(a) and 1174(d) and IWC Wage Order No. 4-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

48. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

## **SEVENTH CAUSE OF ACTION**

### **Failure to Furnish Accurate Itemized Wage Statements**

**[Cal. Labor Code § 226(a), 1174; IWC Wage Order No. 4-2001, § 7]**

**(Against all DEFENDANTS)**

49. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the factual allegations in the foregoing paragraphs.

50. During the CLASS PERIOD, DEFENDANTS routinely failed and continue to fail to provide PLAINTIFF and CLASS MEMBERS with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and only the last four digits of his or her social security number or employee identification number, the name and address of the legal entity or entities employing PLAINTIFF and CLASS MEMBERS, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of California Labor Code § 226(a) and IWC Wage Order No. 4-2001, § 7.

51. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and CLASS MEMBERS with timely and accurate itemized wage statements in accordance with Labor Code § 226(a).

52. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at

1 trial, and seek all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and  
2 CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to  
3 civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of  
4 costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in  
5 California Labor Code § 226(e), as well as other available remedies.

## 6 **EIGHTH CAUSE OF ACTION**

### 7 **Failure to Indemnify Employees for Necessary Expenditures**

#### 8 **Incurred in Discharge of Duties**

#### 9 **[Cal. Labor Code § 2802]**

#### 10 **(Against all DEFENDANTS)**

11 53. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the  
12 factual allegations in the foregoing paragraphs.

13 54. California Labor Code § 2802(a) requires an employer to indemnify an employee  
14 for all necessary expenditures or losses incurred by the employee in direct consequence of the  
15 discharge of her his or her duties, or of his or her obedience to the directions of the employer.

16 55. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to  
17 indemnify PLAINTIFF and CLASS MEMBERS for all business expenses and/or losses incurred  
18 in direct consequence of the discharge of their duties while working under the direction of  
19 DEFENDANTS, including but not limited to expenses for cell phone usage, and other  
20 employment-related expenses, in violation of California Labor Code § 2802.

21 56. As a proximate result of DEFENDANTS' unlawful actions and omissions,  
22 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at  
23 trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to  
24 California Labor Code § 2802(b). Additionally, PLAINTIFF and CLASS MEMBERS are  
25 entitled to all available statutory penalties and an award of costs, expenses, and reasonable  
26 attorneys' fees, including those provided in California Labor Code § 2802(c), as well as other  
27 available remedies.

28 ///

1 **NINTH CAUSE OF ACTION**

2 **Unfair and Unlawful Business Practices**

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

4 **(Against all DEFENDANTS)**

5 57. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the  
6 factual allegations in the foregoing paragraphs.

7 58. Each and every one of DEFENDANTS' acts and omissions in violation of the  
8 California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but  
9 not limited to DEFENDANTS' failure and refusal to provide required meal periods,  
10 DEFENDANTS' failure and refusal to provide required rest periods, DEFENDANTS' failure and  
11 refusal to pay overtime compensation, DEFENDANTS' failure and refusal to pay minimum  
12 wages, DEFENDANTS' failure and refusal to pay all wages due to discharged or quitting  
13 employees, DEFENDANTS' failure and refusal to furnish accurate itemized wage statements;  
14 DEFENDANTS' failure and refusal to maintain required records, DEFENDANTS' failure and  
15 refusal to indemnify PLAINTIFF and CLASS MEMBERS for necessary expenditures and/or  
16 losses incurring in discharging their duties, constitutes an unfair and unlawful business practice  
17 under California Business and Professions Code § 17200 *et seq.*

18 59. DEFENDANTS' violations of California wage and hour laws constitute a business  
19 practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over  
20 a significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and  
21 CLASS MEMBERS.

22 60. DEFENDANTS have avoided payment of wages, overtime wages, meal periods,  
23 rest periods, and other benefits as required by the California Labor Code, the California Code of  
24 Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to  
25 record, report, and pay the correct sums of assessment to the state authorities under the California  
26 Labor Code and other applicable regulations.

27 61. As a result of DEFENDANTS' unfair and unlawful business practices,  
28 DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the expense

1 of PLAINTIFF, CLASS MEMBERS, and members of the public. DEFENDANTS should be  
2 made to disgorge their ill-gotten gains and to restore them to PLAINTIFF and CLASS  
3 MEMBERS.

4 62. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFF and  
5 CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not  
6 limited to orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFF and  
7 CLASS MEMBERS the wages and other compensation unlawfully withheld from them.  
8 PLAINTIFF and CLASS MEMBERS are entitled to restitution of all monies to be disgorged  
9 from DEFENDANTS in an amount according to proof at the time of trial, but in excess of the  
10 jurisdiction of this Court.

11 **TENTH CAUSE OF ACTION**

12 **Representative Action for Civil Penalties**

13 **[Cal. Labor Code §§ 2698–2699.5]**

14 **(Against All DEFENDANTS)**

15  
16 63. PLAINTIFF incorporates herein by specific reference as though fully set forth the  
17 allegations in all preceding paragraphs.

18 64. PLAINTIFF is an “aggrieved employee” within the meaning of California Labor  
19 Code § 2699(c), and a proper representative to bring a civil action on behalf of himself and other  
20 current and former employees of DEFENDANTS pursuant to the procedures specified in  
21 California Labor Code § 2699.3, because PLAINTIFF and CLASS MEMBERS were employed  
22 by DEFENDANTS and the alleged violations of the California Labor Code were committed  
23 against PLAINTIFF and CLASS MEMBERS.

24 65. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”),  
25 Labor Code §§ 2698–2699.5, PLAINTIFF and CLASS MEMBERS seek to recover civil  
26 penalties, including but not limited to penalties under California Labor Code §§ 2699, 210,  
27 226.3, 558, 1174.5, 1197.1, and IWC Wage Order No. 4-2001, § 20, from DEFENDANTS in a  
28 representative action for the violations set forth above, including but not limited to violations of

1 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and  
2 2802. PLAINTIFF and CLASS MEMBERS are also entitled to an award of reasonable attorneys'  
3 fees and costs pursuant to California Labor Code § 2699(g)(1).

4 66. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice on  
5 October 25, 2021 by online filing to the California Labor and Workforce Development Agency  
6 ("LWDA") and by certified mail to DEFENDANTS of the specific provisions of the California  
7 Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories  
8 to support the alleged violations. More than sixty-five (65) days have passed and the LWDA has  
9 not provided notice to PLAINTIFF that it intends to investigate the alleged violations.

10 67. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice on  
11 May 31, 2022 by online filing to the California Labor and Workforce Development Agency  
12 ("LWDA") and by certified mail to DEFENDANTS of the specific provisions of the California  
13 Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories  
14 to support the alleged violations. More than sixty-five (65) days have passed and the LWDA has  
15 not provided notice to PLAINTIFF that it intends to investigate the alleged violations.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other persons similarly  
18 situated, respectfully prays for relief against DEFENDANTS as follows:

- 19 1. For compensatory damages in an amount to be ascertained at trial;
- 20 2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well  
21 as disgorged profits from DEFENDANTS' unfair and unlawful business practices;
- 22 3. For meal and rest period compensation pursuant to California Labor Code § 226.7  
23 and IWC Wage Order No. 4-2001;
- 24 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 25 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from  
26 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and  
27 from engaging in the unlawful business practices complained of herein;
- 28 6. For waiting time penalties pursuant to California Labor Code § 203;

1           7.       For statutory and civil penalties according to proof, including but not limited to all  
2 penalties authorized by the California Labor Code §§ 226(e) and §§ 2698–2699.5;

3           8.       For interest on the unpaid wages at 10% per annum pursuant to California Labor  
4 Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable  
5 provision providing for pre-judgment interest;

6           9.       For reasonable attorneys’ fees and costs pursuant to California Labor Code  
7 §§ 1194, 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions  
8 providing for attorneys’ fees and costs;

9           10.      For declaratory relief;

10          11.      For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,  
11 Seventh, Eighth, and Ninth Causes of Action as a class action;

12          12.      For an order appointing PLAINTIFF as class representative, and PLAINTIFF’s  
13 counsel as class counsel; and

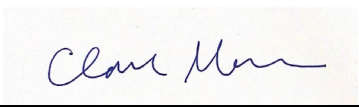
14          13. For such further relief that the Court may deem just and proper.

15               DATED: August 5, 2022

16                               Respectfully submitted,

17                               **MATERN LAW GROUP, PC**

18  
19                               By:

20                               

21                               Matthew J. Matern  
22                               Joshua D. Boxer  
23                               Clare E. Moran  
24                               Attorneys for Plaintiff  
25                               THOMAS CROSS, individually and on  
26                               behalf of other persons similarly situated and  
27                               aggrieved  
28

1 **DEMAND FOR JURY TRIAL**

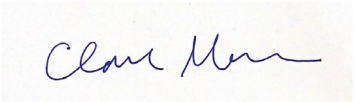
2 PLAINTIFF hereby demands a jury trial with respect to all issues triable of right by jury.

3  
4  
5 DATED: August 5, 2022

Respectfully submitted,

6 **MATERN LAW GROUP, PC**

7 By:

8 

9 \_\_\_\_\_  
10 Matthew J. Matern  
11 Joshua D. Boxer  
12 Clare E. Moran  
13 Attorneys for Plaintiff  
14 THOMAS CROSS, individually and on  
15 behalf of others similarly situated and  
16 aggrieved  
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