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24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

25 **IN AND FOR THE COUNTY OF SHASTA**

26 LEVI JAMES, an individual, on behalf of  
27 himself and on behalf of all persons similarly  
28 situated,

Plaintiff,

v.

GERLINGER FOUNDRY AND MACHINE  
WORKS, INC. D/B/A GERLINGER STEEL  
& SUPPLY, a California Corporation; and  
DOES 1-50, Inclusive,

Defendants.

**FILED**

JAN 21 2025

SHASTA COUNTY SUPERIOR COURT  
BY: K. PRIDE, DEPUTY CLERK

Case No: **206862**  
**CLASS ACTION COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

Dr. H. F.

- 1 5) FAILURE TO PROVIDE REQUIRED  
2 REST PERIODS IN VIOLATION OF  
3 CAL. LAB. CODE §§ 226.7 & 512 AND  
4 THE APPLICABLE IWC WAGE  
5 ORDER;  
6 6) FAILURE TO PROVIDE ACCURATE  
7 ITEMIZED STATEMENTS IN  
8 VIOLATION OF CAL. LAB. CODE §  
9 226;  
10 7) FAILURE TO PROVIDE WAGES WHEN  
11 DUE IN VIOLATION OF CAL. LAB.  
12 CODE §§ 201, 202 AND 203;  
13 8) FAILURE TO REIMBURSE  
14 EMPLOYEES FOR REQUIRED  
15 EXPENSES IN VIOLATION OF  
16 CALIFORNIA LABOR CODE §2802;

17 **DEMAND FOR A JURY TRIAL**

18 Plaintiff LEVI JAMES (“PLAINTIFF”), an individual, on behalf of himself and all  
19 other similarly situated current and former employees, alleges on information and belief, except for  
20 his own acts and knowledge which are based on personal knowledge, the following:

21 **THE PARTIES**

22 1. Defendant GERLINGER FOUNDRY AND MACHINE WORKS, INC.  
23 (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein  
24 conducted and continues to conduct substantial and regular business in the state of California,  
25 county of Shasta, owns, operates, and/or manages a metal fabrication and industrial supply  
26 business.

27 2. The true names and capacities, whether individual, corporate, subsidiary,  
28 partnership, associate or otherwise of Defendants DOES 1 through 50, inclusive, are presently  
unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant  
to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the  
true names and capacities of Does 1 through 50, inclusive, when they are ascertained.  
PLAINTIFF is informed and believes, and based upon that information and belief alleges, that  
the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter  
collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one

1 or more of the events and happenings that proximately caused the injuries and damages  
2 hereinafter alleged.

3 3. The agents, servants, and/or employees of the Defendants and each of them acting  
4 on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as  
5 the agent, servant and/or employee of the Defendants, and personally participated in the conduct  
6 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.  
7 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all  
8 Defendants are jointly and severally liable to PLAINTIFF and the other members of the  
9 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the  
10 Defendants' agents, servants and/or employees.

11 4. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of  
12 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or  
13 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision  
14 regulating hours and days of work in any order of the Industrial Welfare Commission and, as  
15 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,  
16 at all relevant times.

17 5. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of  
18 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,  
19 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any  
20 employee a wage less than the minimum fixed by California state law, and as such, are subject to  
21 civil penalties for each underpaid employee

22 6. PLAINTIFF was employed by DEFENDANT in California from November 2023  
23 to present, and was at all times classified by DEFENDANT as a non-exempt employee, paid on  
24 an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum  
25 and overtime wages due for all time worked.

26 7. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA  
27 CLASS, defined as all persons who are or previously were employed by DEFENDANT in  
28 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time

1 during the period beginning four (4) years prior to the filing of this Complaint and ending on the  
2 date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the  
3 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars  
4 (\$5,000,000.00).

5 8. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA  
6 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
7 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to  
8 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged  
9 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained  
10 and continues to retain wages due to PLAINTIFF and the other members of the CALIFORNIA  
11 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction  
12 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the  
13 other members of the CALIFORNIA CLASS who have been economically injured by  
14 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable  
15 relief.

16 9. DEFENDANTS' uniform policies and practices alleged herein were unlawful,  
17 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain  
18 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

19 10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an  
20 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named  
21 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically  
22 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and  
23 equitable relief.

#### 24 **JURISDICTION AND VENUE**

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

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

### **THE CONDUCT**

13. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS for meal and rest premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

#### **A. Meal Period Violations**

14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,

1 meaning the time during which an employee is subject to the control of an employer, including  
2 all the time the employee is suffered or permitted to work. From time to time during the CLASS  
3 PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work  
4 without paying them for all the time they were under DEFENDANTS' control. Specifically, as a  
5 result of PLAINTIFF's demanding work requirements, performing tasks such as pulling and  
6 loading steel, and DEFENDANTS' failure to adequately staff the business, DEFENDANTS  
7 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's  
8 off-duty meal break. PLAINTIFF and other CALIFORNIA CLASS Members were disallowed  
9 from taking meal breaks at the legally required times. As a result, the PLAINTIFF and other  
10 CALIFORNIA CLASS Members forfeited minimum wage and overtime wages by regularly  
11 working without their time being accurately recorded and without compensation at the applicable  
12 minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay  
13 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by  
14 DEFENDANTS' business records.

15         15. From time to time during the CLASS PERIOD, as a result of their rigorous work  
16 requirements, performing tasks such as pulling and loading steel, and DEFENDANTS'  
17 inadequate staffing practices, PLAINTIFF and other CALIFORNIA CLASS Members were from  
18 time to time unable to take thirty (30) minute off-duty meal breaks and were not fully relieved of  
19 duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS Members were  
20 required from time to time to perform work as ordered by DEFENDANTS for more than five (5)  
21 hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to  
22 time failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty  
23 meal period for some workdays in which these employees were required by DEFENDANTS to  
24 work ten (10) hours of work from time to time. The nature of the work performed by PLAINTIFF  
25 and other CALIFORNIA CLASS Members does not qualify for limited and narrowly construed  
26 "on-duty" meal period exceptions. When they were provided with meal periods, PLAINTIFF and  
27 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and  
28 on call. PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks

1 without additional compensation and in accordance with DEFENDANTS' strict corporate policy  
2 and practice.

3 **B. Rest Period Violations**

4 16. During the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS  
5 Members were required to work in excess of four (4) hours without being provided ten (10) minute  
6 rest periods as a result of their rigorous work requirements, performing tasks such as pulling and  
7 loading steel, and DEFENDANTS' failure to adequately staff the business. Further, for the same  
8 reasons, these employees were denied their first rest periods of at least ten (10) minutes for some  
9 shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period  
10 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from  
11 time to time, and a first, second, and third rest period of at least ten (10) minutes for some shifts  
12 worked of ten (10) hours or more from time to time. When they were provided with rest breaks,  
13 PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to  
14 continue working and were not fully relieved of duty. PLAINTIFF and other CALIFORNIA  
15 CLASS Members were also not provided with one-hour wages in lieu thereof. As a result of their  
16 rigorous work schedules and DEFENDANTS' failure to enforce break policies, PLAINTIFF and  
17 other CALIFORNIA CLASS Members were routinely denied their proper rest periods by  
18 DEFENDANTS and DEFENDANTS' managers.

19 **C. Regular Rate Violation – Overtime, and Meal and Rest Period Premiums**

20 17. From time to time during the CLASS PERIOD, DEFENDANTS failed and  
21 continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS  
22 Members for their overtime hours worked, and meal and rest period premiums. As a result,  
23 PLAINTIFF and the other CALIFORNIA CLASS Members forfeited wages due to them for  
24 working overtime without compensation at the correct overtime rate and for missed meal and rest  
25 period premiums. DEFENDANTS' uniform policy and practice to not pay the PLAINTIFF and  
26 the CALIFORNIA CLASS the correct overtime rate for all overtime worked, and meal and rest  
27 period premiums in accordance with applicable law, is evidenced by DEFENDANTS' business  
28 records.

1           18. State law provides that employees must be paid overtime at one-and-one-half times  
2 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were  
3 compensated at an hourly rate.

4           19. However, from-time-to-time, when calculating the regular rate of pay, in those pay  
5 periods where PLAINTIFF and the CALIFORNIA CLASS Members worked overtime,  
6 DEFENDANTS failed to calculate all hours worked rather than just all non-overtime hours  
7 worked.

8           20. In violation of the applicable sections of the California Labor Code and the  
9 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS, as a  
10 matter of company policy, practice, and procedure, intentionally and knowingly failed to  
11 compensate PLAINTIFF and the CALIFORNIA CLASS at the correct rate of pay for all overtime  
12 compensation. This uniform policy and practice of DEFENDANTS is intended to purposefully  
13 avoid the payment of the correct overtime pay compensation as required by California law, which  
14 allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors who  
15 complied with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
16 CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

17       **D. Unreimbursed Business Expenses**

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

1           22. In the course of their employment, DEFENDANTS required PLAINTIFF and  
2 other CALIFORNIA CLASS Members to use their personal cell phones as a result of and in  
3 furtherance of their job duties as employees for DEFENDANTS. For example, PLAINTIFF and  
4 other CALIFORNIA CLASS Members were required to use their personal cell phones multiple  
5 times a day to clock in and out of shifts and meals via an app. However, DEFENDANTS  
6 unlawfully failed to fully reimburse PLAINTIFF and other CALIFORNIA CLASS Members for  
7 their use of personal cell phones. DEFENDANTS provided a \$10 monthly stipend, which did not  
8 adequately cover the expenses incurred by PLAINTIFF and the CALIFORNIA CLASS Members  
9 for this required business use.

10           23. In addition, DEFENDANTS required PLAINTIFF and other CALIFORNIA  
11 CLASS Members to purchase personal protective equipment (PPE), including work boots, for use  
12 in the workplace. While DEFENDANTS reimbursed these expenses through a pooled fund that  
13 accumulates based on days worked, this practice fails to comply with California Labor Code §  
14 2802, which mandates direct reimbursement for necessary expenditures.

15           24. As a result, in the course of their employment with DEFENDANTS, the  
16 PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed business  
17 expenses, including but not limited to costs related to the use of their personal cellular phones and  
18 personal protective equipment, all on behalf of and for the benefit of DEFENDANTS.

19       **E. Wage Statement Violations**

20           25. California Labor Code Section 226 requires an employer to furnish its employees  
21 with an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours  
22 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,  
23 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the  
24 name of the employee and only the last four digits of the employee's social security number or an  
25 employee identification number other than a social security number, (8) the name and address of  
26 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay  
27 period and the corresponding number of hours worked at each hourly rate by the employee.  
28

1           26. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
2 CALIFORNIA CLASS Members missed meal and rest breaks, or performed off-the-clock work,  
3 DEFENDANTS also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members  
4 with complete and accurate wage statements. These wage statements failed to show, among other  
5 things, the total hours worked and all applicable hourly rates in effect during the pay period and  
6 the corresponding amount of time worked at each hourly rate, and accurate pay for missed meal  
7 and rest periods.

8           27. In addition to the violations described above, DEFENDANTS, from time to time,  
9 failed to provide PLAINTIFF and CALIFORNIA CLASS Members with wage statements that  
10 comply with Cal. Lab. Code § 226. Specifically, DEFENDANTS failed to include the correct  
11 total number of hours worked on the wage statements.

12           28. As a result, DEFENDANTS issued PLAINTIFF and other members of the  
13 CALIFORNIA CLASS wage statements that violate Cal. Lab. Code § 226. Further,  
14 DEFENDANTS' violations are knowing and intentional, were not isolated, and were not due to  
15 an unintentional payroll error or clerical or inadvertent mistake.

16       **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

17           29. During the CLASS PERIOD, from time to time, DEFENDANTS failed and  
18 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA  
19 CLASS for all hours worked. Specifically, DEFENDANTS, from time to time, required  
20 PLAINTIFF and the other members of the CALIFORNIA CLASS to perform off-the-clock post-  
21 shift work. For instance, DEFENDANTS required PLAINTIFF and the other members of the  
22 CALIFORNIA CLASS, from time to time, to clock out at the end of a scheduled shift but continue  
23 to work to complete tasks, time for which DEFENDANTS did not provide compensation while  
24 off the clock. Notwithstanding, from time to time, DEFENDANTS failed to pay PLAINTIFF and  
25 other members of the CALIFORNIA CLASS necessary wages for performing work at  
26 DEFENDANTS' direction, request, and benefit while off the clock.

27           30. During the CLASS PERIOD, DEFENDANTS required PLAINTIFF and other  
28 members of the CALIFORNIA CLASS to perform post-shift work, including but not limited to

1 cleaning up the facility and completing the forklift inspection sheet. This resulted in PLAINTIFF  
2 and other members of the CALIFORNIA CLASS having to work while off the clock.

3 31. DEFENDANTS directed and directly benefited from the uncompensated off-the-  
4 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

5 32. DEFENDANTS controlled the work schedules, duties, protocols, applications,  
6 assignments, and employment conditions of PLAINTIFF and the other members of the  
7 CALIFORNIA CLASS.

8 33. DEFENDANTS were able to track the amount of time PLAINTIFF and the other  
9 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to  
10 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all  
11 wages earned and owed for all the work they performed, including pre-shift, post-shift, and during  
12 meal period off-the-clock work.

13 34. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-  
14 exempt employees, subject to the requirements of the California Labor Code.

15 35. DEFENDANTS' policies and practices deprived PLAINTIFF and the other  
16 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double-time  
17 wages owed for the off-the-clock work activities. Because PLAINTIFF and the other members of  
18 the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight  
19 (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

20 36. DEFENDANTS knew or should have known that PLAINTIFF and the other  
21 members of the CALIFORNIA CLASS's off-the-clock work was compensable under the law.

22 37. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
23 forfeited wages due to them for all hours worked at DEFENDANTS' direction and control.

24 38. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the  
25 members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable  
26 law is evidenced by DEFENDANTS' business records.

27 39. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take  
28 off-duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.

1 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)  
2 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to  
3 provide PLAINTIFF with a second off-duty meal period each workday in which he was required  
4 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF  
5 with a rest break, they required PLAINTIFF to remain on the premises, on duty, and on call for  
6 the rest break. DEFENDANTS' policy caused PLAINTIFF to remain on call and on duty during  
7 what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest  
8 breaks without additional compensation and in accordance with DEFENDANTS' strict corporate  
9 policy and practice.

10 **G. CLASS ACTION ALLEGATIONS**

11 40. PLAINTIFF brings the First through Eighth Causes of Action as a class action  
12 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current  
13 and former non-exempt California employees ("CALIFORNIA CLASS") during the period  
14 beginning four years prior to the filing of the Complaint and ending on a date determined by the  
15 Court ("CLASS PERIOD").

16 41. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been  
17 deprived of wages and penalties from unpaid wages earned and due, including but not limited to  
18 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,  
19 illegal meal and rest period policies, failure to reimburse for business expenses, failure to  
20 compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure  
21 to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and  
22 expenses.

23 42. The members of the class are so numerous that joinder of all class members is  
24 impractical.

25 43. Common questions of law and fact regarding DEFENDANTS' conduct, including  
26 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to  
27 accurately calculate the regular rate of pay for overtime compensation, failure to accurately  
28 calculate the regular rate of compensation for missed meal and rest period premiums, failing to

1 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure  
2 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least  
3 minimum wage and overtime, exist as to all members of the class and predominate over any  
4 questions affecting solely any individual members of the class. Among the questions of law and  
5 fact common to the class are:

- 6 a. Whether DEFENDANTS maintained legally compliant meal period policies and  
7 practices;
- 8 b. Whether DEFENDANTS maintained legally compliant rest period policies and  
9 practices;
- 10 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA  
11 CLASS Members accurate premium payments for missed meal and rest periods;
- 12 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA  
13 CLASS Members accurate overtime wages;
- 14 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA  
15 CLASS Members at least minimum wage for all hours worked;
- 16 f. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA  
17 CLASS Members for required business expenses;
- 18 g. Whether DEFENDANTS issued legally compliant wage statements;
- 19 h. Whether DEFENDANTS committed an act of unfair competition by  
20 systematically failing to record and pay PLAINTIFF and the other members of the  
21 CALIFORNIA CLASS for all time worked;
- 22 i. Whether DEFENDANTS committed an act of unfair competition by  
23 systematically failing to record all meal and rest breaks missed by PLAINTIFF  
24 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed  
25 the benefit of this work, required employees to perform this work and permits or  
26 suffers to permit this work;
- 27
- 28

1           j. Whether DEFENDANTS committed an act of unfair competition in violation of  
2           the UCL, by failing to provide the PLAINTIFF and the other members of the  
3           CALIFORNIA CLASS with the legally required meal and rest periods.

4           44. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as  
5 a result of DEFENDANTS' conduct and actions alleged herein.

6           45. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has  
7 the same interests as the other members of the class.

8           46. PLAINTIFF will fairly and adequately represent and protect the interests of the  
9 CALIFORNIA CLASS Members.

10          47. PLAINTIFF retained able class counsel with extensive experience in class action  
11 litigation.

12          48. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the  
13 interests of the other CALIFORNIA CLASS Members.

14          49. There is a strong community of interest among PLAINTIFF and the members of  
15 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are  
16 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries  
17 sustained.

18          50. The questions of law and fact common to the CALIFORNIA CLASS Members  
19 predominate over any questions affecting only individual members, including legal and factual  
20 issues relating to liability and damages.

21          51. A class action is superior to other available methods for the fair and efficient  
22 adjudication of this controversy because joinder of all class members is impractical. Moreover,  
23 since the damages suffered by individual members of the class may be relatively small, the  
24 expense and burden of individual litigation makes it practically impossible for the members of the  
25 class individually to redress the wrongs done to them. Without class certification and  
26 determination of declaratory, injunctive, statutory and other legal questions within the class  
27 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will  
28 create the risk of:

- 1 a. Inconsistent or varying adjudications with respect to individual members of the  
2 CALIFORNIA CLASS which would establish incompatible standards of conduct  
3 for the parties opposing the CALIFORNIA CLASS; and/or,  
4 b. Adjudication with respect to individual members of the CALIFORNIA CLASS  
5 which would as a practical matter be dispositive of the interests of the other  
6 members not party to the adjudication or substantially impair or impeded their  
7 ability to protect their interests.

8 52. Class treatment provides manageable judicial treatment calculated to bring an  
9 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of  
10 the conduct of DEFENDANTS.

11 **FIRST CAUSE OF ACTION**

12 **Unlawful Business Practices**

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

14 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

15 53. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
16 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
17 Complaint.

18 54. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
19 Code § 17021.

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

24 Any person who engages, has engaged, or proposes to engage in unfair  
25 competition may be enjoined in any court of competent jurisdiction. The court may  
26 make such orders or judgments, including the appointment of a receiver, as may be  
27 necessary to prevent the use or employment by any person of any practice which  
28 constitutes unfair competition, as defined in this chapter, or as may be necessary to  
restore to any person in interest any money or property, real or personal, which may  
have been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code  
§ 17203).

1           56. By the conduct alleged herein, DEFENDANT has engaged and continues to  
2 engage in a business practice which violates California law, including but not limited to, the  
3 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
4 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,  
5 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.  
6 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
7 constitute unfair competition, including restitution of wages wrongfully withheld.

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

13           58. By the conduct alleged herein, DEFENDANT's practices were deceptive and  
14 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally  
15 mandated meal and rest periods and the required amount of compensation for missed meal and  
16 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the  
17 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.  
18 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,  
19 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

20           59. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
21 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the  
22 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
23 DEFENDANT.

24           60. By the conduct alleged herein, DEFENDANT's practices were also unfair and  
25 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide  
26 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members  
27 as required by Cal. Lab. Code §§ 226.7 and 512.  
28

1           61.     Therefore, PLAINTIFF demands on behalf of himself and on behalf of each  
2 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal  
3 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for  
4 each workday in which a second off-duty meal period was not timely provided for each ten (10)  
5 hours of work.

6           62.     PLAINTIFF further demands on behalf of himself and on behalf of each  
7 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was  
8 not timely provided as required by law.

9           63.     By and through the unlawful and unfair business practices described herein,  
10 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the  
11 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and  
12 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the  
13 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT  
14 to unfairly compete against competitors who comply with the law.

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

20           65.     PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
21 and do, seek such relief as may be necessary to restore to them the money and property which  
22 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the  
23 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
24 business practices, including earned but unpaid wages for all time worked.

25           66.     PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
26 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,  
27 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
28 engaging in any unlawful and unfair business practices in the future.

1           67. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
2 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of  
3 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a  
4 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other  
5 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal  
6 and economic harm unless DEFENDANT is restrained from continuing to engage in these  
7 unlawful and unfair business practices.

8                                   **SECOND CAUSE OF ACTION**

9                                   **Failure To Pay Minimum Wages**

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

11                                  **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

12           68. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
13 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
14 Complaint.

15           69. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim  
16 for DEFENDANT’S willful and intentional violations of the California Labor Code and the  
17 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate  
18 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

21           71. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
22 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than  
23 the minimum so fixed is unlawful.

24           72. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,  
25 including minimum wage compensation and interest thereon, together with the costs of suit.

26           73. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the  
27 other members of the CALIFORNIA CLASS without regard to the correct amount of time they  
28 worked. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and

1 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the  
2 CALIFORNIA CLASS.

3 74. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,  
4 without limitation, applicable to the CALIFORNIA CLASS as a whole as a result of  
5 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF  
6 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

7 75. In committing these violations of the California Labor Code, DEFENDANT  
8 inaccurately calculated the amount of time worked and consequently underpaid the actual time  
9 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted  
10 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of  
11 the California Labor Code, the Industrial Welfare Commission requirements and other applicable  
12 laws and regulations.

13 76. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,  
14 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
15 minimum wage compensation for their time worked for DEFENDANT.

16 77. During the CLASS PERIOD, PLAINTIFF and the other members of the  
17 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a  
18 failure to pay all earned wages.

19 78. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned  
20 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true  
21 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have  
22 suffered and will continue to suffer an economic injury in amounts which are presently unknown  
23 to them, and which will be ascertained according to proof at trial.

24 79. DEFENDANT knew or should have known that PLAINTIFF and the other  
25 members of the CALIFORNIA CLASS are under-compensated for their time worked.  
26 DEFENDANT systematically elected, either through intentional malfeasance or gross  
27 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice  
28 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay

1 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages  
2 for their time worked.

3 80. In performing the acts and practices herein alleged in violation of California labor  
4 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked  
5 and provide them with the requisite compensation, DEFENDANT acted and continues to act  
6 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the  
7 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the  
8 consequences to them, and with the despicable intent of depriving them of their property and legal  
9 rights, and otherwise causing them injury in order to increase company profits at the expense of  
10 these employees.

11 81. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore  
12 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the  
13 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the  
14 California Labor Code and/or other applicable statutes. To the extent minimum wage  
15 compensation is determined to be owed to the CALIFORNIA CLASS Members who have  
16 terminated their employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or  
17 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.  
18 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS  
19 Members. DEFENDANT'S conduct as alleged herein was willful, intentional and not in good  
20 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and  
21 recover statutory costs.

### 22 **THIRD CAUSE OF ACTION**

#### 23 **Failure To Pay Overtime Compensation**

24 **(Cal. Lab. Code §§ 510, 1194 and 1198)**

25 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

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

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

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

16          87.     During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members  
17 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time  
18 they worked, including overtime work.

19          88.     DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
20 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
21 implementing a uniform policy and practice that failed to accurately record overtime worked by  
22 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to  
23 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,  
24 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve  
25 (12) hours in a workday, and/or forty (40) hours in any workweek.

26          89.     In committing these violations of the California Labor Code, DEFENDANT  
27 inaccurately recorded overtime worked and consequently underpaid the overtime worked by  
28 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal

1 attempt to avoid the payment of all earned wages, and other benefits in violation of the California  
2 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and  
3 regulations.

4 90. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
5 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full  
6 compensation for overtime worked.

7 91. Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
8 from the overtime requirements of the law. None of these exemptions are applicable to the  
9 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the  
10 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining  
11 agreement that would preclude the causes of action contained in this Complaint. Rather,  
12 PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA CLASS based on  
13 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of  
14 California.

15 92. During the CLASS PERIOD, PLAINTIFF and the other members of the  
16 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,  
17 constituting a failure to pay all earned wages.

18 93. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of  
19 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the  
20 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even  
21 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,  
22 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as  
23 evidenced by DEFENDANT's business records and witnessed by employees.

24 94. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned  
25 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all  
26 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA  
27 CLASS have suffered and will continue to suffer an economic injury in amounts which are  
28 presently unknown to them, and which will be ascertained according to proof at trial.

1           95.     DEFENDANTS knew or should have known that PLAINTIFF and the other  
2 members of the CALIFORNIA CLASS were undercompensated for all overtime worked.  
3 DEFENDANT systematically elected, either through intentional malfeasance or gross  
4 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice  
5 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay  
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

7           96.     In performing the acts and practices herein alleged in violation of California labor  
8 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime  
9 worked and provide them with the requisite overtime compensation, DEFENDANT acted and  
10 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other  
11 members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights,  
12 or the consequences to them, and with the despicable intent of depriving them of their property  
13 and legal rights, and otherwise causing them injury in order to increase company profits at the  
14 expense of these employees.

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

26                           **FOURTH CAUSE OF ACTION**

27                           **Failure To Provide Required Meal Periods**

28                           **(Cal. Lab. Code §§ 226.7 & 512)**

1           **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

2           98. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and  
3 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
4 Complaint.

5           99. During the CLASS PERIOD, DEFENDANT failed to provide all the legally  
6 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as  
7 required by the applicable Wage Order and Labor Code. The nature of the work performed by  
8 PLAINTIFF and CALIFORNIA CLASS MEMBERS did not prevent these employees from being  
9 relieved of all of their duties for the legally required off-duty meal periods. As a result of their  
10 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not  
11 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's  
12 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required  
13 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business  
14 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS  
15 Members with a second off-duty meal period in some workdays in which these employees were  
16 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other  
17 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation  
18 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

27                           **FIFTH CAUSE OF ACTION**

28                           **Failure To Provide Required Rest Periods**



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

### **SIXTH CAUSE OF ACTION**

#### **Failure To Provide Accurate Itemized Statements**

**(Cal. Lab. Code §§ 226)**

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

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

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

- a. Gross wages earned,
- b. total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- c. the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and

- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

108. When DEFENDANT did not accurately record PLAINTIFF's and other CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that properly and accurately itemizes all wages, and missed meal and rest periods and reporting time wages owed to PLAINTIFF and the other members of the CALIFORNIA CLASS and thereby also failed to set forth the correct wages earned by the employees.

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

## **SEVENTH CAUSE OF ACTION**

### **Failure To Pay Wages When Due**

**(Cal. Lab. Code §§ 203)**

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

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

111. Cal. Lab. Code § 200 provides that:

As used in this article:

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

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

5 112. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges  
6 an employee, the wages earned and unpaid at the time of discharge are due and payable  
7 immediately."

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

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

14 114. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS  
15 Members' employment contract.

16 115. Cal. Lab. Code § 203 provides:

17 If an employer willfully fails to pay, without abatement or reduction, in accordance with  
18 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who  
19 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.

20 116. The employment of PLAINTIFF and many CALIFORNIA CLASS Members  
21 terminated, and DEFENDANT has not tendered payment of wages to these employees who were  
22 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as  
23 required by law.

24 117. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the  
25 members of the CALIFORNIA CLASS whose employment has terminated, PLAINTIFF  
26 demands up to thirty (30) days of pay as a penalty for not paying all wages due at time of  
27 termination for all employees who terminated employment during the CLASS PERIOD and  
28

1 demand an accounting and payment of all wages due, plus interest and statutory costs as allowed  
2 by law.

3 **EIGHTH CAUSE OF ACTION**

4 **Failure To Reimburse Employees For Required Expenses**

5 **(Cal. Lab. Code §§ 2802)**

6 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

11 An employer shall indemnify his or her employee for all necessary expenditures or losses  
12 incurred by the employee in direct consequence of the discharge of his or her duties, or of  
13 his or her obedience to the directions of the employer, even though unlawful, unless the  
14 employee, at the time of obeying the directions, believed them to be unlawful

15 120. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal.  
16 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the  
17 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for  
18 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of  
19 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to  
20 using their personal cellular phone, vehicles, and tools all on behalf of and for the benefit of  
21 DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were  
22 required by DEFENDANTS to use their personal cell phones to execute their essential job duties  
23 on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to  
24 not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting  
25 from using their personal cellular phones, vehicles, and tools for DEFENDANTS within the  
26 course and scope of their employment for DEFENDANTS. These expenses were necessary to  
27 complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to  
28 assert any waiver of their expectation. Although these expenses were necessary expenses incurred  
by PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANTS failed to

1 indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for these  
2 expenses as an employer is required to do under the laws and regulations of California.

3 121. PLAINTIFF therefore demands reimbursement on behalf of the members of the  
4 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and  
5 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with  
6 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

7 **PRAYER FOR RELIEF**

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

10 1. On behalf of the CALIFORNIA CLASS:

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

21 2. On behalf of the CALIFORNIA CLASS:

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

- 1 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
2 the applicable IWC Wage Order;
- 3 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
4 which a violation occurs and one hundred dollars (\$100) per each member of the  
5 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding  
6 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for  
7 violation of Cal. Lab. Code § 226
- 8 e. The wages of all terminated employees from the CALIFORNIA CLASS as a  
9 penalty from the due date thereof at the same rate until paid or until an action  
10 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 11 3. On all claims:
- 12 a. An award of interest, including prejudgment interest at the legal rate;
- 13 b. Such other and further relief as the Court deems just and equitable; and
- 14 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
- 15

16 DATED: January 16, 2025

17 **SELIGSON LAW P.C.**

18

19 By: Kenneth Seligson

20 Kenneth Seligson  
21 Attorney for PLAINTIFF

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**DEMAND FOR A JURY TRIAL**

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

DATED: January 16, 2025

**SELIGSON LAW P.C.**

By: Kenneth Seligson

Kenneth Seligson  
Attorney for PLAINTIFF