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Attorneys for Plaintiff Michael Stewart II
and the Proposed Class

Assigned for all purposes:
Judge Randall J. Sherman
Dept. CX105

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

MICHAEL STEWART II, individually and on
behalf of all current and former similarly situated
employees in the State of California,

Plaintiffs,

v.

JUUL LABS, INC., a Delaware Corporation;
ROSS LAND, an individual; and DOES 1 to 50,
inclusive,

Defendants.

CASE NO.: 30-2023-01331620-CU-OE-CXC
ASSIGNED FOR ALL PURPOSES TO:
**CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, AND
RESTITUTION:**
**1. FAILURE TO PAY WAGES FOR
ALL HOURS WORKED,
INCLUDING OVERTIME WAGES
(VIOLATION OF CALIFORNIA
LABOR CODE §§ 510, 1194, 1198;
IWC WAGE ORDER NO.7.);**
**2. FAILURE TO PROVIDE MEAL
PERIODS (VIOLATION OF IWC
WAGE ORDER 7-2001, CAL. LAB.
CODE §§ 226.7, 512);**
**3. FAILURE TO AUTHORIZE AND
PERMIT REST BREAKS
(VIOLATION OF IWC WAGE
ORDER 7-2001, CAL. LAB. CODE §
226.7);**
**4. FAILURE TO INDEMNIFY FOR
NECESSARY EXPENDITURES
INCURRED IN DISCHARGE OF
DUTIES (VIOLATION OF CAL.
LAB. CODE § 2802, 2804, 432.5);**

1) 5. WAITING TIME PENALTIES
2) (VIOLATION OF CALIFORNIA
3) LABOR CODE § § 201, 202, 203);
4) 6. FAILURE TO PROVIDE
5) ACCURATE ITEMIZED WAGE
6) STATEMENTS (VIOLATION OF
7) CALIFORNIA LABOR CODE §§
8) 226(a), 1174;
9) 7. FAILURE TO PAY EARNED
10) WAGES VIOLATION OF LABOR
11) CODE § 200;
12) 8. VIOLATION OF BUSINESS &
13) PROFESSIONS CODE §17200;
14) 9. RACE/COLOR DISCRIMINATION
15) IN VIOLATION OF FEHA;
16) 10. RACE/COLOR DISCRIMINATION
17) IN VIOLATION OF PUBLIC
18) POLICY;
19) 11. FAILURE TO PREVENT RACE/
20) COLOR DISCRIMINATION IN
21) VIOLATION OF FEHA;
22) 12. RETALIATION IN VIOLATION
23) OF FEHA;
24) 13. WRONGFUL TERMINATION IN
25) VIOLATION OF PUBLIC POLIC;
26) 14. WHISTLEBLOWER VIOLATION
27) OF CAL. LAB. CODE § 1102.5
28)
[UNLIMITED JURISDICTION]
DEMAND FOR JURY TRIAL

COMES NOW Plaintiff MICHAEL STEWART II, individually and on behalf of all other current and former similarly situated employees and alleges as follows:

THE PARTIES

A. Plaintiff

1. Plaintiff MICHAEL STEWART II, (hereinafter "PLAINTIFF") is an African American individual currently residing in San Diego, California. PLAINTIFF was a resident of the State of California, county of San Diego, throughout the time of his employment which gave rise to this action.

2. PLAINTIFF brings causes of action (1 through 8) on behalf of himself and similarly situated current and former employees in the State of California (hereinafter "CLASS" or

1 “PLAINTIFFS”) complains of Defendants Juul Labs, Inc., (“JLI”); ROSS LAND (“LAND”) and
2 DOES 1 to 50, inclusive (collectively referred to as “DEFENDANTS”) and brings this Class and
3 Representative Action to recover, among other things, damages, indemnification of business
4 expenses, wages unlawfully deducted, injunctive relief, penalties for failure to comply with various
5 California Labor Code sections and the Industrial Welfare Commission Wage Order 7-2001, (“IWO
6 Wage Order 7”), interest, restitution, attorneys’ fees, and costs, and any other appropriate relief for
7 DEFENDANTS’ systematic pattern of violations of California law which contributed to JLI’s
8 deliberate unfair competition.

9 3. PLAINTIFF seeks to represent only himself for causes of action (9-14) for
10 DEFENDANTS’ violation of California law, including the Fair Employment and Housing Act
11 (“FEHA”), California Government Code § 12940, *et seq.*

12 4. PLAINTIFF is a former employee of DEFENDANTS who began his employment with
13 DEFENDANTS from approximately September 23, 2019, until his unlawful termination on July 27,
14 2022 and held the position of a Territory Sales Manager in the State of California, San Diego
15 Division.

16 5. PLAINTIFF suffered various violations of California law during his employment with
17 DEFENDANTS because he was improperly classified as an “exempt” employee. PLAINTIFF
18 reserves the right to name additional class representatives.

19 6. PLAINTIFFS are current and former employees of DEFENDANTS, who hold the position
20 of Territory Sales Managers, or similar titles, for a period of time within the four (4) years preceding
21 the filing of this action who were also intentionally misclassified as “exempt” employees by
22 DEFENDANTS.

23 **B. Defendants**

24 7. At all relevant times alleged herein, PLAINTIFFS are informed and believe, and based
25 thereon allege that Defendant JUUL LABS, INC., (“JLI”), is a corporation organized and existing
26 under the laws of the State of Delaware and is and was at all times mentioned herein qualified and
27 registered to do business throughout California. JLI’s principal place of business is 560 20th Street,
28 San Francisco, CA 94107.

1 8. At all relevant times alleged herein, PLAINTIFFS are informed and believe, and based
2 thereon allege that Defendant ROSS LAND (“LAND”) is a resident of the State of California, County
3 of Orange, City of Irvine. PLAINTIFFS are informed and believe, and based thereon allege, that
4 Defendant LAND is the Director of Sales of the entire Western Region that directly oversees and
5 controls JLI’s operation and was PLAINTIFF’S immediate supervisor that exercised significant
6 control over DEFENDANTS’ employees overall working conditions. LAND managed 100 percent
7 of the CLASS in the state of California and exercised significant control over their overall working
8 conditions.

9 9. PLAINTIFFS are informed and believe, and based thereon allege, that LAND permitted,
10 authorized, approved, and ratified the wrongful acts and practices against the PLAINTIFF and the
11 CLASS within the Western Region while overseeing JLI’s operation in California.

12 10. LAND had the authority to hire, write-up, and terminate the PLAINTIFF and the other
13 CLASS members in the state of California; to set work rules and conditions governing PLAINTIFF
14 and the other CLASS members’ employment; and to supervise their daily employment activities.

15 11. At all relevant times alleged herein, LAND was the highest-ranking individual of JLI
16 in California. LAND was the only Director in California who managed the entire CLASS of JLI’s
17 employees in California.

18 12. At all relevant times alleged herein, LAND permitted, authorized, approved, and
19 ratified the wrongful acts and practices against the PLAINTIFF and the CLASS.

20 13. PLAINTIFFS are unaware of the true names and capacities, whether individual,
21 corporate, associate, or otherwise of the defendants sued herein as DOES 1 through 50, inclusive,
22 and for that reason PLAINTIFFS sue said defendants by such fictitious names pursuant to § 474 of
23 the California Code of Civil Procedure. PLAINTIFF will file and serve an amendment to this
24 Complaint alleging the true names and capacities of these fictitiously named defendants when
25 PLAINTIFF knows such true names and capacities. PLAINTIFFS are informed and believe, and
26 based thereon allege, that each of the DOE Defendants are in some manner liable to PLAINTIFFS
27 for the events and actions alleged herein. JLI, LAND, and DOES 1 through 50, inclusive, are referred
28 to collectively herein as “DEFENDANTS.”

1 14. PLAINTIFFS are informed and believe, and based thereon allege that at all times herein
2 mentioned, each of the DEFENDANTS, whether named or fictitious, exercised sufficient authority
3 over the terms and conditions of PLAINTIFFS' employment for them to be liable as the "employer"
4 and/or "person" for the claims asserted in this Complaint, including but not limited to, under Labor
5 Code § 558.1 and §18, who violated or caused to be violated California Labor Code or any provision
6 regulating hours and days of work in any order of the Industrial Welfare Commissions, as such are
7 subject to penalties for each underpaid employee, which includes an amount equal to the underpaid
8 wages, which shall be paid to each affected employee, as set forth in Labor Code § 558.

9 15. Specifically, each of the Defendants including LAND, was an "employer" as the term
10 is expressly defined by the IWC Order 7-2001 [8CCR § 11070], subdivision 2(F) "any person as
11 defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other
12 person, employs or exercises control over the wages, hours, or working conditions of any person."
13 A "person" as defined by California Labor Code § 18 "means any person, association, organization,
14 partnership, business trust, limited liability company, or corporation.

15 16. LAND's conduct forms a significant basis for the PLAINTIFFS' claims alleged herein.
16 LAND is sued individually pursuant to Cal. Labor Code § 558, and 588.1 which defines "employer
17 or other person acting on behalf of an employer" to include a "natural person who is an owner,
18 director, officer, or managing agent of the employer." LAND is "director, officer or managing agent
19 of the employer."

20 17. Each of the defendants, JLI, and LAND is a "person" as defined in California Labor
21 Code § 2699(b), which is defined having "the same meaning as defined in Section 18."

22 18. Each of the defendants, including LAND, in performing their duties, knew that their
23 actions were unlawful and intentionally acted anyway by, *inter alia*, misclassifying PLAINTIFFS as
24 "exempt" and thereby denying PLAINTIFFS their rights under California law.

25 19. Furthermore, LAND is sued and liable individually for his own unlawful conduct under
26 Unfair Completion Law ("UCL") wherein the individual need not be an agent of an employer (or of
27 the corporate defendants specifically) to be liable for conversion, or for unfair competition. *See*
28

1 *Manser v. Sierra Foothills Pub. Util. Dist.*, No. 1:08-cv-1250-LJO-SMS, 2008 WL 5114619, at *8
2 (E.D. Cal. Dec. 4, 2008) (“An individual may be liable for his or her own conduct under the UCL.”)

3 20. Defendant LAND, violated or caused the violations alleged herein because he created,
4 implemented, directed and/or enforced DEFENDANTS’ employment practices and policies,
5 including but not limited to, meal and rest period polices, overtime policies, and vehicle
6 reimbursement policies.

7 21. Defendant LAND created, set, enforced and/or implemented DEFENDANTS’ policies,
8 practices, and procedures regarding payment of wages, including overtime wages, and meal and rest
9 period premiums that resulted in the failure to pay PLAINTIFFS proper wages for all hours worked.

10 22. Defendant LAND exercised day-to-day control over PLAINTIFFS’ employment,
11 controlled and authorized payroll transactions, and supervised JLI’s current and former employees.

12 23. LAND approved DEFENDANTS’ boilerplate timecards and implemented and enforced
13 DEFENDANTS policy and practice of disallowing Territory Sales Managers to submit timecards
14 that reflects their actual hours of work to avoid payment of wages for any work performed in excess
15 of eight (8) hours per day and/or forty hours (40) per week. LAND violated or caused the violations
16 described in this Complaint against PLAINTIFFS, including failing to pay and refusing to authorize
17 the payment of wages for all hours worked, the payment of overtime wages, meal and rest premiums,
18 all wages due upon separation of employment, and the reimbursement of employees for business
19 expenses.

20 24. PLAINTIFFS are informed and believe, and based thereon allege that at all times
21 relevant herein, each of the DEFENDANTS, whether named or fictitious, was an employer, was the
22 principle, agent, co-conspirator, partner, joint venturer, officer, director, controlling shareholder,
23 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of each
24 of the other DEFENDANTS named herein, and, in doing the acts and in carrying out the wrongful
25 conduct alleged herein, was engaged with some or all of the other DEFENDANTS in a joint
26 enterprise for profit, and bore such other relationships to some or all of the other DEFENDANTS so
27 as to be liable for their conduct with respect to the matters alleged in this Complaint.
28

1 25. At all times mentioned herein, PLAINTIFFS are further informed and believe and
2 thereon allege that each and every of the acts and omissions alleged herein were performed by, and/or
3 attributable to each of the DEFENDANTS, whether named or fictitious, each acting as agents and/or
4 employees, and/or under the directions and control of each of the other DEFENDANTS and acting
5 pursuant to and within the course and scope of the relationships alleged above, and that all relevant
6 times, each of the DEFENDANTS knew or should have known about, authorized, ratified, adopted,
7 approved, controlled, aided and abetted the conduct of all other DEFENDANTS.

8 26. PLAINTIFF is informed and believes and thereupon allege that DEFENDANTS, and
9 each of them, exercised sufficient degree of control over PLAINTIFF to render each of the
10 DEFENDANTS the employer or joint employers of PLAINTIFF. Throughout PLAINTIFFS'
11 employment, the DEFENDANTS assigned work to PLAINTIFFS and directed each in the
12 performance thereof, to which end PLAINTIFFS were required to report to each of the
13 DEFENDANTS on a regular basis and did so report. DEFENDANTS each had the authority to
14 control the terms and conditions of PLAINTIFFS' employment; set work rules and conditions
15 governing PLAINTIFFS' employment; and to supervise their daily employment activities. As result
16 of sufficient authority and exercise of control over the terms and conditions of PLAINTIFFS
17 employment, DEFENDANTS, and each of them, are joint employers of PLAINTIFF, and each of
18 them, is jointly and severally liable to PLAINTIFFS for the damages alleged herein.

19 27. As a direct and proximate result of the unlawful actions of the DEFENDANTS,
20 PLAINTIFFS have suffered and continue to suffer from loss of earnings in amounts as yet
21 unascertained, but subject to proof at trial and within the jurisdiction of this Court.

22 28. At all relevant times herein, PLAINTIFFS were employed by DEFENDANTS under
23 employment agreements that were partly written, partly oral, and partly implied. In perpetrating the
24 acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to and in
25 furtherance of their policies and practices of not paying PLAINTIFFS for all hours worked, including
26 overtime; failing to provide compliant meal periods; failing to authorize and permit rest periods;
27 failing to provide accurate itemized wage statements; failure to timely pay wages due upon
28 termination of employment; failing to reimburse and indemnify PLAINTIFFS for expenditures in

1 discharge of their duties; failing to properly maintain records; requiring employees and applicants to
2 agree to illegal employment terms and conditions.

3 29. By doing the unlawful acts alleged herein, DEFENDANTS decreased their
4 employment-related costs by systematically and intentionally misclassifying Territory Managers as
5 “exempt” to avoid compliance with California wage and hour laws and IWC Orders.

6 30. PLAINTIFF brings this lawsuit seeking injunction, restitution, and monetary relief
7 against DEFENDANTS on behalf of himself and all other current and former employees of
8 DEFENDANTS to recover, among other things, restitution, unpaid wages, interest, penalties,
9 liquidated damages, attorney’s fees and costs pursuant to California Labor Code 201, 202, 203, 218.6,
10 226, 226.3, 226.7, 432.5, 510, 512, 558, 1194, 1198, and 2802, for penalties pursuant to Labor Code
11 § 2699, and the Business and Professions Code § 17200 *et seq.*

12 **JURISDICTION**

13 31. This Court has jurisdiction over this action pursuant to the California Constitution,
14 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes”
15 except those given by statute to other courts. The statutes under which this action is brought do not
16 specify any other basis for jurisdiction.

17 32. Venue is proper in this Court because, upon information and belief, DEFENDANTS
18 maintain offices, have agents, and/or transact business in the State of California, county of Orange.
19 DEFENDANTS’ illegal policies and practices which are the subject of this action were also applied
20 in the State of California, including the county of Orange, and because records relevant and related
21 to this action are maintained in this county where defendant LAND, resides and maintains his
22 residence as a place of business in this judicial district.

23 **PLAINTIFF EXHAUSTED HIS ADMINISTRATIVE REMEDIES**

24 33. PLAINTIFF met all the jurisdictional requirements of proceeding with claims for civil
25 penalties under the Labor Code Private Attorney’s General Act (“PAGA”), codified at Labor Code,
26 Section 2698 *et seq.* by timely giving written notice in the manner required by Labor Code § 2699.3
27 at the time of filing. Specifically, on June 13, 2023, PLAINTIFF exhausted his administrative
28 remedies by notifying DEFENDANTS via certified U. S. Mail, and by online filing to Labor and
Workforce Development Agency (“LWDA”) (a true and correct copy is attached and incorporated

1 herein as Exhibit “1”). Once (65) days elapses after PLAINTIFF’S notification and PLAINTIFF’S
2 counsel receives no notice from LAWD stating their intention to investigate or prosecute the claims,
3 PLAINTIFF will file an amended Complaint to add his PAGA Claims.

4 34. Additionally, on June 13, 2023, PLAINTIFF timely filed a charge of discrimination
5 with the Civil Rights Department of the State of California (“CRD”). The CRD issued a Right-to-
6 Sue Notice on June 13, 2023. A true and correct copy of PLAINTIFF’s Right-to-Sue Notice is
7 attached and incorporated by reference as Exhibit “2.”

8 **FACTUAL BACKGROUND**

9 35. This is a Class Action and Representative Action, brought pursuant to California Code
10 of Civil Procedure §382, California Business and Professions Code § 17200 et seq., and the Labor
11 Code Private Attorney General Act 2004 (“PAGA”), California Labor Code § 2698 *et seq.*

12 36. PAGA permits an “aggrieved employee” to bring a lawsuit on behalf of himself and
13 other current and former employees to address an employer’s violations of the California Labor
14 Code.

15 37. PLAINTIFF makes the allegations in this Complaint without any admission to any
16 particular allegation, PLAINTIFF bears the burden of pleading, proving, or persuading and
17 PLAINTIFF reserves all of PLAINTIFF’S rights to plead the alternative.

18 **PLAINTIFFS Experience as a Misclassified “Exempt” Employees**

19 38. JLI, like most manufacturers of consumer products, contracts for the sale of their
20 products in geographical territories to retail outlets. The enforcement and compliance of their
21 contracts with the retail outlets are overseen by Territory Sales Managers.

22 39. Through the Territory Sales Managers, JLI maintains contact with their customers (*i.e.*,
23 the retail outlets). Territory Sales Managers are described as the “eyes and ears” of JLI within their
24 territories.

25 40. Each Territory Sales Manager is expected to cancel a retail store’s contract in the event
26 the retail store is not in compliance with the contractual terms of its agreement with JLI relating to,
27 among other things, pricing, availability of products, and display.

28 41. On or about September 23, 2019, DEFENDANTS, jointly and severally, employed
PLAINTIFF as a Territory Sales Manager, and paid him on a salary basis until his unlawful
termination on July 27, 2022.

1 42. Similar to PLAINTIFF'S misclassification as an "exempt" employee, DEFENDANTS
2 also hired other current and former Territory Sales Managers and misclassified them as "exempt"
3 and improperly paid them on salary basis.

4 43. Each Territory Sales Manager bears the sole responsibility for ensuring that each retail
5 outlet that maintains JLI's products within his/her territory complies with the contract. Accordingly,
6 each Territory Sales Manager is responsible for making periodic visits to each retail outlet at various
7 locations throughout the day within the assigned geographic territory that carries JLI' products in
8 their inventory.

9 44. During each visit the Territory Manager's duties include the following, among others:
10 (a) inspection of contracted retail outlets to ensure their compliance with the contractual terms which
11 govern JLI's display and pricing; (b) an assessment of the location of brand displays; (c) re-setting
12 JLI's products on the shelves; (d) determining that brand promotions have been properly
13 implemented; (e) scanning the barcodes on products to confirm contracted pricing; and (f) evaluation
14 of the placement of point of sale materials.

15 45. DEFENDANTS require each Territory Sales Manager to carry DEFENDANTS'
16 assigned iPad to each store. Territory Sales Managers are required to "check-in" using
17 DEFENDANTS' iPad to each store upon arrival and departure.

18 46. Upon information and belief, each iPad is equipped with Wi-Fi device, and a tracking
19 GPS device, and all entries into the iPad are live and can be viewed by management at any point in
20 time. Specifically, each visit to any retail outlet entered into the CRM software is time-stamped in
21 local time which means, each Territory Sales Manager's time and whereabouts is accounted for.
22 Therefore, accounting each Territory Sales Manager's time for the purpose of compensation for all
23 hours worked, could have been easily accomplished.

24 47. At the conclusion of each store visit, DEFENDANTS' policies mandate that the
25 Territory Sales Manager report that visit through CRM software ("CRM"). To report the visit and
26 ensure that the assignments at each store throughout California are uniformly completed, each
27 Territory Sales Manager is required to answer a series of questions confirming strict compliance with
28 DEFENDANTS' assigned tasks. After responding to the series of questions, PLAINTIFFS are
required to "check-out" on CRM, which marks the system of the time of the Territory Sales
Manager's departure from each store.

1 48. Additionally, each territory Sales Manager reports through CRM, his or her
2 observations relating to pricing, product placement, signage, product availability, and promotions (if
3 applicable) at each retail location visited, updates a retailer's contact and tax identification
4 information, and reports other retail conditions aimed at ensuring contractual compliance. CRM is
5 the means by which DEFENDANTS track Territory Sales Managers and the retail store's
6 compliance.

7 49. CRM is of great importance to DEFENDANTS because it ensures that Territory Sales
8 Managers are in compliance with DEFENDANTS uniform policies and procedures (throughout
9 California) that each Territory Sales Manager must comply with. More specifically, to ensure that
10 each Territory Sales Manager is strictly complying with his or her job duties, dictated by
11 DEFENDANTS, the CRM report created by each Territory Sales Manager is reviewed by the Senior
12 Division Manager of each geographic territory.

13 50. PLAINTIFF and similarly situated Territory Sales Managers could not and did not
14 engage in any direct sales of JLI's products to the retail outlets' consumers.

15 51. Almost all the retail outlets PLAINTIFFS are required to visit already have pre-existing
16 contracts with JLI. Territory Managers' main job function is to ensure that retail outlets are
17 complying with their already existing contractual obligations.

18 52. Territory Managers do not deliver any of JLI's products to the contracted retail outlets.
19 Each retail outlet orders its own tobacco products from wholesalers, such as Core-Mark, McLane,
20 Costco, Sam's Club, etc.

21 53. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS
22 engaged and continue to engage in a uniform policy and systematic scheme of wage abuse against
23 PLAINTIFFS. This scheme involved, *inter alia*, misclassifying these positions as "exempt"
24 managerial employees for the sole purposes of avoiding payment of overtime compensation, when
25 in fact, PLAINTIFFS were "non-exempt," non-managerial employees according to California Law.

26 54. DEFENDANTS misclassified PLAINTIFF along with other current and former
27 Territory Managers as "Managers" and according to DEFENDANTS were exempt from state and
28 federal laws mandating overtime wages, accurate itemized wage statements documenting overtime
hours earned, and meal and rest breaks.

1 55. DEFENDANTS misclassified PLAINTIFFS, intentionally and willfully, as “exempt”
2 salaried employees even though their job function does not fall under any of the limited exemption
3 requirements under California Law.

4 56. Territory Sales Managers, did not supervise any employees, and did not perform other
5 tasks generally associated with “managers.” Territory Sales Managers’ job duties not only fail to fit
6 the definition of executive or administrative employees as set forth under California Law; but also,
7 said job duties do not qualify as “outside salespersons” under California law. PLAINTIFFS’ work
8 is a mixture of manual labor and other non-sales duties – such as re-setting JLI’s products, checking
9 inventory, rotating products on the shelves based on expiration dates, scanning product barcodes to
10 ensure accurate pricing, enforcing JLI’s contracts with established traditional and non-traditional
11 retail outlets, and providing consulting services to store managers/owners by providing tobacco
12 advice through the development of individual business plans. As stated in the Territory Sales
13 Manager’s job description, **Territory Sales Managers perform a business consulting job:**

14 “provide [stores] with valuable insights about the industry / category, our leading innovative
15 products, consumer profiles/trends to consistently exceed their expectations in our knowledge
16 and attentiveness to their overall business needs and the growth of their overall business in
17 the category.”

18 “Building deep “Trusted Advisor” relationships with store managers / owners and distribution
19 partner’s sales teams by providing expertise and knowledge of the industry, retail strategies
20 and sales tactics.”

21 “It is expected that Territory Sales Managers will become not only a passionate product and
22 industry / category experts, ***as well as a valuable business consultant / advisor*** whose
23 analysis, judgment and knowledge of the consumer and industry dynamics makes for a
24 valuable partner to all of our customers; retail partners, distribution partners, etc.” [Emphasis
25 added].

26 57. PLAINTIFFS’ duties contained minimal outside sales activities, hardly qualifying as
27 sales, such as, occasionally presenting new sales contracts when a retail store’s initial contract is
28 modified by DEFENDANTS.

29 58. DEFENDANTS required PLAINTIFF and the CLASS of Territory Sales Managers to
30 spend more than half of their time at work on ensuring retail stores’ compliance with already existing
31 sales contracts, re-setting of products, making phone calls to retail stores to inform them of
32 manufacturer price increases, product re-calls, and other non-sales activities such as attending
33 mandatory team meetings, and management “work-with.” PLAINTIFF and the CLASS of Territory
34 Managers could not and did not, on purely quantitative basis, spend more than 50% of their time

involved in activities directly related to sales, as activities incidentally related to sales do not meet the exemption under California law.

59. In fact, outlets visited by the PLAINTIFF and Territory Sales Managers, are classified into three types by DEFENDANTS: (1) Independent; (2) Franchise; and (3) non-franchise.

- **Independent:** the outlet is owned and operated by an individual or a small corporation.
- **Franchise:** the outlet is affiliated with an account chain but is independently owned and operated. An example of a franchise chain is 7-Eleven. The method of doing business in a franchise outlet involves a standardized, corporate approach for conducting business across outlets.
- **Non-Franchise:** the outlet is affiliated with an account (chain) that is corporately owned. An example of a non-franchise chain is Walgreens. Decisions about tobacco programs are made at the account headquarter level.

60. Therefore, because all decision about tobacco programs (e.g., promotions, pricing, and contracts) for franchise and non-franchise outlets are made at the account headquarter level, Key Account Managers and Account Managers call on the account headquarter for franchise and non-franchise outlets. That leaves only a limited number of outlets, “independently owned and operated outlets” that can make all decisions about tobacco programs (e.g., promotions, pricing, and contracts) at the outlet level.

61. As a result, since decisions about tobacco programs can be made only in a limited number of stores, so is the Territory Sales Manager’s ability to influence the decision of the non-franchise and franchise outlets about tobacco programs. This job responsibility is assigned to Account Managers and Key Account Managers to do so. The fact that Key Account Managers and Account Managers are in charge of influencing franchise, and non-franchise decisions, renders the alleged *exempt sales activity* (obtaining orders or contracts for products) performed by Territory Sales Managers at the outlet level to activities “incidental to sales” which do not count as “sales activity.”

62. More specifically, *even if* DEFENDANTS allege that all of the “4Ps¹” the PLAINTIFF and Territory Sales Managers perform qualify as “sales activity” for purposes of determining whether the Territory Sales Manager’s position falls under the outside sales exemption, the fact that decisions about tobacco programs (e.g., promotion, pricing, and contracts) are made at the headquarter level for franchise and non-franchise outlets, Defendants cannot prove that

¹ Product availability, Placement/Presence, Pricing, and Promotion.

1 PLAINTIFF and Territory Sales Managers spent *more than 50 percent* of their working hours at
2 independent outlets.

3 63. DEFENDANTS were therefore not exempt from their obligation to provide overtime
4 pay, meal and rest break periods, and other worker protections simply because when physical work
5 of re-setting products on the shelves, and scanning product barcodes were complete, Territory Sales
6 Managers, handful of times, sold or attempted to sell contracts for additional line of products to retail
7 outlets that already had existing contracts but did not carry all line of products.

8 64. Each Territory Sales Manager reports to a Division Manager. PLAINTIFF reported to
9 RAJ BEHAL (“BEHAL”), who reported to LAND, the Director LAND. BEHAL was promoted to
10 Division Manager even though BEHAL did not have more experience than the PLAINTIFF. In fact,
11 BEHAL and PLAINTIFF both worked for R.J. Reynolds Tobacco Company prior to joining JLI.
Even with R.J. Reynolds, PLAINTIFF had a higher-ranking position than BEHAL did.

12 65. Territory Managers are tightly constrained by the instruction and oversight of their
13 director, who uniformly applies JLI’s policies.

14 66. PLAINTIFFS, as Territory Sales Managers, were provided specific instruction as to what
15 tasks they should perform each week as determined by JLI. For instance, when new products were
16 launched, PLAINTIFFS were required to re-set the tobacco fixtures to make room for the new
17 products. Since each Territory Sales Manager was assigned anywhere between 180 to 200 retail
18 stores, it would take each Territory Sales Manager about 10 to 12 weeks to re-set the fixtures of the
19 retail stores assigned within the territory.

20 67. Because all Territory Sales Manager in California perform the same tasks as directed by
21 JLI, Division Managers and Directors would “work-with” each Territory Sales Manager for an entire
22 workday randomly visiting retail stores assigned to each Territory Sales Manager to ensure
23 standardized operation. Upon information and belief, corporate policy dictates that Division
24 Mangers are to work with each Territory Sales Manger at least once every 4 weeks. The purpose of
the “work-with” is to ensure that each Territory Manager strictly performs the functions of the job.

25 68. Following each Division Manager’s “work-with” each of the Territory Sales Managers
26 assigned to his/her division, the Division Manager would create a detailed “work-with” report and
27 review the findings with each of the Territory Sales Manager to ensure that JLI’s policies and
28 procedures were uniformly applied throughout the state.

1 69. Neither PLAINTIFF, nor any other Territory Sales Manager in California employed by
2 DEFENDANTS, had any discretion to deviate from the tasks assigned by DEFENDANTS to be
3 performed. This unrealistic expectation and accelerated work schedule resulted in unpaid worktime.

4 70. DEFENDANTS would require PLAINTIFF and the CLASS to visit all of the retail stores
5 assigned to them in their geographical territory at least once a month. DEFENDANTS would require
6 PLAINTIFF and the CLASS to visit at a minimum 10 to 12 stores per day to ensure merchandizing
7 display and contract compliance. DEFENDANTS would require PLAINTIFF and the CLASS to be
8 at their first store at 8:00 a.m. and were required to be in the field until 5:00 p.m., Monday through
Friday.

9 71. DEFENDANTS failed to compensate the CLASS for drive time, which is compensable
10 under California Law. DEFENDANTS failed to compensate Territory Managers for drive time from
11 their homes to their first stores, and also from their last stores to their homes. Territory Managers
12 are required to be in the field from 8:00 a.m. until 5:00 p.m. Any drive time before 8:00 a.m. to the
13 first store, which may take more than one hour, and any drive time from the last store after 5:00 p.m.,
14 which may take more than one hour, is not compensated.

15 72. PLAINTIFFS' workday would typically start at 6:30 a.m., as each Territory Sales Manager
16 is required to check text messages, e-mails, and voicemails that were sent overnight or that may have
17 come in after the end of the previous day's work, including new work assignments and any
18 instructions to visit retail stores to perform various tasks such as pricing change, or change of
19 merchandizing display. PLAINTIFFS are required to complete reporting tasks that were required of
20 them by DEFENDANTS such as preparing performance plans, preparing presentations, and other
21 tasks as required by DEFENDANTS. PLAINTIFFS are also required to "replicate" the iPad twice
22 per day, once prior to attending the first store, and once again at the conclusion of the workday in the
23 field. Replicating the iPad computer to upload and download files to DEFENDANTS' main server
24 would take, each time, between fifteen (15) minutes to forty-five (45) minutes depending on the size
25 of the files, the number of errors, and/or other issues occurring during replication. PLAINTIFF and
26 the CLASS were not compensated for any of this time. PLAINTIFF and the CLASS were also
required to complete numerous training after their workday in the field.

27 73. Additionally, PLAINTIFFS had to plan their daily route, including mapping ahead of time.
28 There is an assumption made by DEFENDANTS as to how long it would take each Territory Sales

1 Manager to commute to a given work location, how much time it would take at each retail store to
2 perform each of the job functions assigned by DEFENDANTS. Furthermore, PLAINTIFFS were
3 expected to communicate with management in order to keep them apprised as to how their day was
4 progressing as well as to learn the constantly changing corporate protocols and procedures.

5 74. DEFENDANTS held PLAINTIFF and the CLASS to a strict work schedule;
6 underestimating the time it would take to travel from home to the first store location and from the
7 last store location to home; inspect retail store compliance with DEFENDANTS' contractual terms;
8 discuss violations with the owner and/or manager, after waiting for prolonged periods of time for an
9 available manager and/or store owner; writeup a report documenting any incompliance issues; call
10 the next store manager prior to scheduling a visit at the store; and the appropriate time would take to
11 travel from one store to the other.

12 75. If any of the PLAINTIFFS was to request overtime, he/she would stand to be reprimanded
13 for doing so and his/her request would be denied, and he/she would face discipline for failing to
14 follow company policies. Confronted with the dilemma of requesting overtime by submitting a
15 timecard that reflects actual overtime hours, only to be reprimanded and denied anyway, PLAINTIFF
16 and the CLASS would work uncompensated for at least 10 hours per week as was favored and
17 required by DEFENDANTS.

18 76. In addition, whether or not PLAINTIFF and the CLASS were able to make it home without
19 working overtime hours, they would still need to catch up on their paperwork, pull the Org
20 Performance Summary Report, analyze Micro Strategy assignment, review relative performance,
21 implement action plans, as well as to review and respond to all of their e-mails using the iPad
22 provided to them by DEFENDANTS to be used at their homes. Check e-mails every day, minimum
23 of twice per day, morning prior to work and in the evening, prior to replicating.

24 77. Even though PLAINTIFFS were misclassified as "exempt," Territory Sales Managers
25 were not permitted to submit their timecards for any hours worked in excess of eight (8) hours per
26 day and forty (40) hours per week. Specifically, DEFENDANTS compelled PLAINTIFFS to work
27 "off the clock" and only approved them to submit their timecards consisting of not more than forty
28 (40) hours per week, and not more than eight (8) hours per day, which they submitted on bi-weekly
basis regardless of the number of hours worked. In fact, the electronic time-cards Territory Sales
Managers are/were compelled to submit on a bi-weekly basis are prepopulated and Territory Sales

1 Managers are only able to make changes in limited circumstances (e.g., vacation entries or days in
2 which Territory Sales Managers did not work).

3 78. DEFENDANTS knew or should have known that PLAINTIFF and the CLASS routinely
4 worked greater than eight (8) hours per day and forty (40) hours per week without compensation in
5 order to avoid DEFENDANTS' policy of disciplining and/or terminating employees who did not
6 meet the unrealistic job requirements imposed by DEFENDANTS. This accelerated work schedule
7 resulted in an unpaid worktime for all hours worked beyond the *prepopulated* electronic time-card
8 hours between 8 a.m. until 5 p.m. purporting that PLAINTIFF and the CLASS took one (1) hour
meal break, which they could not do so.

9 79. PLAINTIFF and the CLASS would not receive any pay and were not allowed to submit
10 hours reflecting actual hours on their bi-weekly timecards. Upon information and belief, any
11 deviation from the expressed expectation would result in DEFENDANTS' denial of PLAINTIFFS'
12 timecards.

13 80. By misclassifying PLAINTIFFS as "Exempt Territory Managers," DEFENDANTS were
14 able to justify employing PLAINTIFFS for many hours in excess of forty (40) hours each week and
15 eight (8) hours each day without compensating them at the pay rate mandated by California law, and
16 without providing them with meal and rest breaks in accordance with California law.

17 81. DEFENDANTS also denied PLAINTIFF and the CLASS meal and rest breaks through
18 the imposition of work schedules that did not permit meal and rest breaks and/or the imposition of
19 work demands that did not permit meal or rest breaks. PLAINTIFF and the CLASS were unable to
20 complete their job requirements without working through meal and rest breaks and/or working before
and after their scheduled shifts.

21 82. Additionally, PLAINTIFF and the CLASS' meal and rest breaks, if taken, were frequently
22 interrupted by DEFENDANTS' practice of requiring Territory Sales Managers to be on call at all
23 times in order to respond to calls from retail store owners and/or managers, and DEFENDANTS'
24 management and co-workers. PLAINTIFF and the CLASS were pressured to meet their job
25 requirements through DEFENDANTS' policy of disciplining and/or terminating those who did not
26 meet the job requirements imposed by DEFENDANTS.

27 83. As a direct result of DEFENDANTS' work demands, policies, and procedures, and
28 directives, PLAINTIFF and the CLASS did not have the ability to regularly take a daily meal break,

1 much less a daily one-half hour uninterrupted meal period as is required by California law.
2 PLAINTIFF and the CLASS also did not take any rest breaks throughout the workday.

3 84. DEFENDANTS knew or should have known that PLAINTIFF and the CLASS routinely
4 worked through their meal and rest breaks, and before and after their scheduled shifts without
5 compensation.

6 85. DEFENDANTS knew or should have known that PLAINTIFF and the CLASS were
7 entitled to receive certain wages for overtime compensation, and that they were not receiving
8 overtime compensation.

9 86. DEFENDANTS knew or should have known that PLAINTIFF and the CLASS were
10 entitled to receive certain wages for off-the-clock work, and that they were not receiving such
11 compensation.

12 87. DEFENDANTS failed to compensate PLAINTIFF and the CLASS premium pay for
13 missed meal and rest break periods, equal to one additional hour of pay at PLAINTIFF'S and the
14 CLASS' regular rate of pay when a meal and/or a rest period was missed.

15 88. PLAINTIFF and the CLASS were each provided with an iPad to assist them in carrying
16 out the duties prescribed by DEFENDANTS. PLAINTIFF and the CLASS were also expected to
17 maintain a home office. PLAINTIFF and the CLASS; however, were required to use their own
18 personal cellphones, and were required to obtain and maintain an internet service for their home
19 offices. Specifically, DEFENDANTS expected PLAINTIFFS to use their own cellphone to respond
20 to all text messages and calls.

21 89. DEFENDANTS policy and practice only authorized a reimbursement to the PLAINTIFF
22 and the CLASS in the amount of \$120.00/month for cell phone service **but did not cover the cost of**
23 obtaining and maintaining a working cellphone to carry out DEFENDANTS' business.

24 90. Additionally, DEFENDANTS required PLAINTIFF and the CLASS to use their own
25 personal vehicles as a condition of employment but failed to fully reimburse them for the use of their
26 personal vehicles.

27 91. Specifically, DEFENDANTS engage in a policy and practice of compelling and coercing
28 PLAINTIFF and the CLASS to use their own personal vehicles and would only provide them with
partial reimbursement, which did not cover the entire cost. PLAINTIFF and the CLASS have no
choice but to accept DEFENDANTS' unconscionable terms and pay out-of-pocket for the reasonable

1 and necessary costs of the use of their personal vehicles used for DEFENDANTS' business.
2 DEFENDANTS failed to maintain any milage-logs to permit the employees to document the miles
3 they drove for work to be fairly compensated for the costs of doing DEFENDANTS' business.

4 92. The CLASS suffered financial hardships because of DEFENDANTS' failure to provide
5 employees with company credit cards for necessary and reasonable business expenses. The CLASS
6 had to use their own personal debt and/or credit cards to pay for DEFENDANTS' necessary business
7 expenses, which often added debt, interest, and ended up negatively impacting credit scores for
8 employees since DEFENDANTS' would only approve expenses once a month. DEFENDANTS'
9 unlawful policies and practices caused PLAINTIFF and the CLASS unnecessary and unfair financial
burden.

10 93. DEFENDANTS failed to pay PLAINTIFF and former members of the CLASS their earned
11 wages, which PLAINTIFF and former members of the CLASS were entitled to receive based on
12 DEFENDANTS' Yearly Bonus ("YB"). DEFENDANTS engage in a policy and practice of failing
13 to pay former employees their pro rata share of the YB at the time of their termination or resignation.

14 **DEFENDANTS Have Maintained a Pattern and Practice of Race/Color**
15 **Discrimination That Caused PLAINTIFF to Experience Discrimination and**
16 **Retaliation:**

17 94. Although JLI is at the forefront of tobacco companies, their standard operating
18 procedure is pre-Civil Rights Era race discrimination. DEFENDANTS systematically eliminated
19 African American employees, failed to hire them, failed to promote them, and replaced them with
employees who were not black.

20 95. The denials and abridgments of employment opportunities suffered by the PLAINTIFF
21 is part of a general policy and practice of discrimination based on race/color in employment that has
22 existed at JLI throughout the Relevant Time Period. These are not isolated examples of employment
23 practices or individual decisions. To the contrary, these incidents are representative of
24 DEFENDANTS' systematic discrimination against people of color and in favor of non-African
25 American applicants and employees, to create an overwhelmingly white workforce.

26 96. The under-representation of minorities, specifically African Americans, throughout
27 JLI's Territory Managers in California results from an intentional policy and practice of
28 discrimination based on race/color, in hiring, territory assignment, promotion, and termination.

1 97. DEFENDANTS have pursued policies and practices on a continuing basis that have
2 denied and restricted job opportunities to qualified African American applicants and employees.
3 PLAINTIFF was specifically harmed by these unlawful practices. Because of the DEFENDANTS'
4 discriminatory policies PLAINTIFF was denied promotion, despite his qualification, to several
5 positions to which he applied and was interviewed. LAND misled PLAINTIFF into believing that
6 he would be offered a promotion based on his qualification without regard to his race/color. LAND
7 asked PLAINTIFF to keep him informed on any promotional opportunities that he was pursuing.
8 LAND misrepresented to the PLAINTIFF that he would do anything to help him move up within the
9 company. PLAINTIFF, relying on LAND's misrepresentation, e-mailed LAND about multiple
10 promotions that he was well qualified for. Unfortunately, PLAINTIFF would receive no response
11 from LAND.

12 98. PLAINTIFF was misled to believe that DEFENDANTS, and specifically LAND, would
13 not discriminate against him. But for discriminating against PLAINTIFF, PLAINTIFF would have
14 been promoted. LAND would always praise PLAINTIFF and his qualification. Assure the
15 PLAINTIFF that he was valuable, talented, and his knowledge and expertise would certainly get him
16 promoted. Specifically, LAND assured the PLAINTIFF during their bi-weekly one-to-one meetings,
17 that "it wasn't a matter of if he would get promoted, but when".

18 99. In fact, even prior to PLAINTIFF's interview, the hiring team completed their due
19 diligence painstakingly on PLAINTIFF; carefully studying his qualification and success in prior
20 positions. During the third and final interview, PLAINTIFF went to JLI's office in Carlsbad and was
21 personally interviewed with JAMES ULRICH ("ULRICH"), the District Sales Manager, and LAND.
22 Throughout the interview process, PLAINTIFF made it clear and stressed his reasoning that his sole
23 purpose in resigning from his employment at the time with R.J. Reynolds Tobacco Company was to
24 be promoted. DEFENDANTS understood PLAINTIFF's priorities of being promoted and his
25 driving force to resign his position and purported to treat PLAINTIFF fairly without discrimination
26 on the basis of his race/color. ***Specifically, LAND expressly promised the PLAINTIFF that he***
27 ***would be promoted "within the first year at JUUL."*** In fact, LAND admitted during PLAINTIFF's
28

1 interview that given PLAINTIFF's qualification he should be hired at a higher-ranking position and
2 not just a Territory Sales Manager.

3 100. During his 2021 First Half Performance Evaluation, his direct manager LAND
4 described his performance as a "very solid performance" and "very impressive". "Mike's greatest
5 strength is his ability to navigate conversations around the tobacco/vape industry. His experience
6 creates a real advantage when communicating with retailers." "The quality of his work is very good."

7 101. During his 2021 Second Half Performance Evaluation, his direct manager BEHAL
8 complemented his knowledge: "Michael is very knowledgeable of tobacco business. He can have
9 very productive conversations with retailers. I am looking forward to Michael taking a team leader
10 role, getting better at communicating within our team." "Michael performed above and over
11 delivered on the 2nd half goal."

12 102. Contrary to the DEFENDANTS' representation, PLAINTIFF was pigeonholed.
13 PLAINTIFF felt like it was Groundhog Day at JUUL, with the same false promises being made and
14 going unfulfilled. PLAINTIFF was being discriminated against, overused with no reward in sight.
15 In accepting the position, PLAINTIFF believed that he would be provided with the same opportunities
16 for promotion like any other non-African American hard-working employee. However, PLAINTIFF
17 was held back because of DEFENDANTS' discriminatory policies and practices including, without
18 limitation DEFENDANTS' reliance on subjective, arbitrary, standardless, and unvalidated criteria in
19 making promotion decisions, focusing on whether applicants properly reflect the predominantly
20 white image rather than whether they would be responsible, effective Account, or Division Managers
21 who could perform their jobs well.

22 103. Because of PLAINTIFF's repeated complaints that he was being discriminated against,
23 PLAINTIFF was offered sham interviews to several positions to which he applied. However,
24 PLAINTIFF was passed on for every opportunity that he applied for, and every single position was
25 given to someone of a non-African American race. Clearly, that was not a coincident. PLAINTIFF
26 applied to numerous jobs, all of which were offered to non-African American applicants/employees.
27 Among the jobs PLAINTIFF applied are:

- 28 1. Division Manager OC/San Diego, CA;
2. Division Manager Los Angeles, CA;

3. Division Manager Texas/Louisiana;
4. Distribution Manager – Atlanta, GA;
5. Distribution Manager – St. Louis, MO;
6. Distribution Manager – Chicago, IL;
7. Category Manager – West Region;
8. Sales Enablement Associate;
9. Performance Manager; and
10. Distribution Manager – Texas.

104. As time passed, PLAINTIFF became more and more frustrated with the discriminatory treatment and realized that no matter how hard he worked, he would never get promoted. PLAINTIFF realized that to get a promotion, he would have to be a non-African American. PLAINTIFF expressed his views to management, which led to his pretextual write up and termination.

105. PLAINTIFF was not only discriminated against in promotion, but also in the terms and conditions of his employment. PLAINTIFF would be written-up and reprimanded if he ever asked for a day off. But that same standard did not apply to non-African Americans. For instance, on June 9, 2022, PLAINTIFF called off work. The division manager BEHAL had done the very same thing wherein he called off work on June 9-10, 2022. However, BEHAL, a non-African American, was not subjected to the same discriminatory treatment that PLAINTIFF was subjected to.

106. DEFENDANTS relied on subjective, race-based, and stereotypical criteria in making decisions in territory assignments, and promotion (e.g., overworking black employees without recognition or promotion). Not only did PLAINTIFF handle his own territory, but he was overseeing two territories for more than two (2) years. Instead of recognizing his achievement and dedication, he was discriminated against, retaliated, and terminated all because of PLAINTIFF's race/color.

107. DEFENDANTS were targeting white candidates for recruitment and promotion, both systemically and individually (e.g., recognizing the achievements of white Territory Sales Managers, and encouraging them to apply to become Account Managers/Division Managers), but avoiding, ignoring equally qualified African Americans from applying, as was done to PLAINTIFF.

108. In fact, some Division Manager roles were being "gifted" to employees without even allowing employees of color to apply and interview for them. For instance, in December 2020, all employees had an All-Hands call, which is a companywide call. During this call, there was an

1 announcement that certain people had received promotions. Frustrated from the discriminatory
2 policies, PLAINTIFF called LAND immediately following the All-Hands call complaining of the
3 same. LAND admitted that those promotions weren't even listed on the internal website for
4 application and that they were handed to those that were chosen. Not only PLAINTIFF was offered
5 sham interviews to silence him from complaining about discrimination, PLAINTIFF was not offered
6 a fair opportunity to apply to certain other jobs. PLAINTIFF was not silenced, and he expressed his
7 views that it wasn't fair that certain employees of non-African American race wouldn't even have to
8 go through the interview process. Promotions were just "gifted" to them on the basis of their
9 appearance, as opposed to their qualifications for the job, despite the fact that other African American
10 employees, like PLAINTIFF, were more than deserving of the opportunity to move into one of those
11 roles.

12 109. It is difficult to phantom that only two (2) African American employees worked for
13 DEFENDANTS in the *entire* West Region where PLAINTIFFS worked. The two African
14 Americans were: 1) the PLAINTIFF; and 2) a former Territory Sales Manager ANDRE ROUGEAU
15 ("ROUGEAU"). These statistics are appalling in the light of the fact that the entire West Region
16 consists of *more than 35 employees*.

17 110. Similar to PLAINTIFF, ROUGEAU, he too was not offered any promotions during his
18 tenure at JLI despite his tenure (more than 7 years with JLI) and his accomplishment being a highly
19 distinguished member of the West Region.

20 **CLASS ACTION DESIGNATION**

21 111. PLAINTIFF brings this lawsuit as a class action under Cal. Code Civ. Proc. Section 382,
22 California Business and Professions Code § 17200 et seq., and the Labor Private Attorney General
23 Act, California Labor Code § 2698 et seq., on behalf of himself and all persons within the class
24 ("CLASS") as follows:

25 **THE CLASS**

26 112. All current and former employees, who were employed by DEFENDANTS in the State of
27 California for a period of time within the four (4) years preceding the filing of this action until the
28

1 time of trial, “THE RELEVANT TIME PERIOD,” in the position of Territory Sales Managers, or
2 similar positions, who were subjected to DEFENDANTS’ unlawful acts as stated herein.

3 113. PLAINTIFF reserves the right under Rule 3.765, California Rules of Court, to amend or
4 modify the CLASS description with greater specificity or further division into subclasses or
5 limitations to particular issues.

6 114. This action has been brought and may properly be maintained as a class action under the
7 provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
8 interest in the litigation and the proposed CLASS is easily ascertainable. This action is appropriately
9 suited for a Class Action because:

10 115. **Ascertainable Class:** The CLASS is ascertainable in that its members may be identified
11 and located using information contained in DEFENDANTS’ personnel records.

12 116. **Numerosity:** The potential members of the CLASS as defined are so numerous that joinder
13 of all members of the CLASS is impracticable. While the precise size of the CLASS has not been
14 ascertained at this time, PLAINTIFF is informed and believes, and based thereon alleges, that
15 DEFENDANTS currently employee, and during THE RELEVANT TIME PERIOD employed, at
16 least 300 persons in the State of California who fall within the CLASS definition.

17 117. Accounting for employees’ turnover during THE RELEVANT PERIOD necessarily
18 increases this number. PLAINTIFFS allege that DEFENDANTS’ employment records would
19 provide information as to the number and location of members of the CLASS. Joinder of members
20 of the CLASS is not practicable.

21 118. **Common Questions of Fact or Law:** This action involves questions of law and fact
22 common to the CLASS that predominate over questions affecting only individual class members.
23 The common questions of law and fact focuses on DEFENDANTS’ systematic course of illegal
24 practices and policies, which were applied to the entire CLASS in violation of the California Labor
25 Code, IWC Orders, the California Business and Professions Code, which prohibits unfair business
26 practices arising from such violations. These common questions of law and fact include, without
27 limitations:

- 28 a. Whether DEFENDANTS’ California-based “Territory Sales Managers” were classified
as “exempt” in violation of California law;
- b. Whether DEFENDANTS required PLAINTIFF and the CLASS to work over eight (8)

1 hours per day and/or over forty (40) hours per week and failed to pay for all hours
2 worked;

3 c. Whether DEFENDANTS required PLAINTIFF and the CLASS to work over eight (8)
4 hours per day and/or over forty (40) hours per week and failed to pay the legally
5 required overtime compensation to PLAINTIFFS;

6 d. Whether DEFENDANTS deprived PLAINTIFF and the CLASS of meal periods or
7 required PLAINTIFF and the CLASS to work during meal periods without
8 compensation;

9 e. Whether DEFENDANTS deprived PLAINTIFF and the CLASS of rest periods or
10 required PLAINTIFF and the CLASS to work during rest periods without
11 compensation;

12 f. Whether DEFENDANTS failed to reimburse PLAINTIFF and the CLASS for necessary
13 business expenses incurred in the performance of their job duties, in violation of Labor
14 Code §2802;

15 g. Whether DEFENDANTS' requirement that the PLAINTIFF and the CLASS agree to
16 accept and pay for their own vehicle constitutes illegal terms and conditions of
17 employment in violation of Labor Code § 432.5;

18 h. Whether DEFENDANTS failed to timely pay all wages due to PLAINTIFF and the
19 CLASS during their employment;

20 i. Whether DEFENDANTS failed to issue accurately itemized wage statements to
21 PLAINTIFF and the CLASS, in violation of Labor Code §§ 226(a);

22 j. Whether DEFENDANTS kept complete and accurate payroll records as required by
23 California Labor Code, including, inter alia, section 1174(d);

24 k. Whether DEFENDANTS paid PLAINTIFFS their final wages beyond the time frames
25 set forth in Labor Code §§ 201-203;

26 l. Whether DEFENDANTS' conduct was willful or reckless;

27 m. Whether DEFENDANTS failed to properly record all hours worked;

28 n. Whether DEFENDANTS engaged in unfair business practices in violation of California

Business & Professions Code section 17200, *et seq.*

119. **Typicality:** The claims of the PLAINTIFF are typical of the CLASS because DEFENDANTS subjected all of their Territory Sales Managers to identical violations of the California Labor Code, IWC Wage Order, and California Business and Professions Code by, *inter alia*, failing to pay PLAINTIFFS for all hours worked; failing to pay PLAINTIFFS for overtime wages; failing to reimburse PLAINTIFFS for reasonable business expenses incurred in the discharge of their duties; failing to properly maintain PLAINTIFFS' records; failing to provide PLAINTIFFS accurate itemized statements for each pay period; failing to authorize or permit PLAINTIFFS to take meal and rest breaks as required by California law; and requiring PLAINTIFFS to agree to illegal terms and conditions of employment.

120. **Adequacy of Representation:** PLAINTIFF is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the CLASS. PLAINTIFF has no interests that are adverse to the interests of the CLASS. PLAINTIFF'S attorneys are ready, able and willing to fully and adequately represent the CLASS and individual PLAINTIFF. PLAINTIFF has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are and will be necessarily expended for the prosecution of this action for the substantial benefit of each CLASS member.

121. **Superiority of Class Action:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed members of the CLASS is not practicable, and questions of law and fact common to the proposed CLASS predominate over any questions affecting only individual members of the proposed CLASS. Each member of the proposed CLASS has been damaged and is entitled to recovery by reason of DEFENDANTS' illegal policies and/or practices.

122. **Public Policy Consideration:** Certification of this lawsuit as a class action will advance public policy objectives. Employers of this state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the Complaint anonymity that allows for the vindication of their rights.

123. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. PLAINTIFF

1 is unaware of any difficulties that are likely to be encountered in the management of this action that
2 would preclude its maintenance as a class action. Individualized litigation would also present the
3 potential for inconsistent or contradictory judgments, in addition of duplication of efforts and
4 expenses.

5 **FIRST CAUSE OF ACTION**
6 **FAILURE TO PAY FOR ALL HOURS WORKED INCLUDING OVERTIME**
7 **COMPENSATION**
8 **(In Violation of CAL. LAB. CODE §§ 510, 1194, 1198; IWC WAGE ORDER NO.7.)**
9 **(Against All DEFENDANTS)**

10 124. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
11 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

12 125. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS are and were
13 misclassified as “exempt” employees of DEFENDANTS and did not receive compensation for all
14 hours worked and did not receive overtime pay for work performed in excess of 40 hours per week
15 regardless of the number of hours actually worked.

16 126. By misclassifying PLAINTIFF and the CLASS as “exempt” DEFENDANTS deprived
17 PLAINTIFF and the CLASS proper protections and benefits of the laws governing the payment of
18 wages for all hours worked and overtime wages.

19 127. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS regularly and/or
20 consistently worked in excess of eight (8) hours in a workday, and/or in excess of forty (40) hours in
21 a workweek. The precise number of overtime hours will be proven at trial. Despite the hours worked
22 by PLAINTIFF and the CLASS, DEFENDANTS intentionally, willfully, in bad faith, and in
23 knowing violation of the California Labor Code, and the applicable IWC Wage Order failed and
24 refused to compensate PLAINTIFF and the CLASS for all of the overtime wages earned.

25 128. At all relevant times, DEFENDANTS were aware of, and were under a duty to comply with
26 the overtime provisions of the IWO Wage Orders, and California Labor Code including, but not
27 limited to, California Labor Code §§510, 1194 and 1198.

28 129. The IWC Wage Order provides that DEFENDANTS are and were required to pay
PLAINTIFF and the CLASS employed by DEFENDANTS, and working more than eight (8) hours

1 in a day or more than forty (40) hours in a workweek, at a rate of time-and-one half for all hours
2 worked in excess of eight (8) hours in a day or more than forty hours (40) in a workweek.

3 130. The Applicable IWC Wage Order further provides that DEFENDANTS are and were
4 required to pay PLAINTIFF and the CLASS overtime compensation at the rate of two times their
5 regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

6 131. California Labor Code § 510 codifies the right to overtime compensation and provides, in
7 pertinent part:

8 “Any work in excess of eight hours in one workday and any work in excess of 40 hours in
9 any one workweek and the first eight hours worked on the seventh day of work in any one
workweek shall be compensated at the rate of no less than one and one-half times the regular
rate of pay for an employee.”

10 132. California Labor Code § 1194, in pertinent part, provides:

11 “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than
12 the legal minimum wage or the legal overtime compensation applicable to the employee is
13 entitled to recover in a civil action the unpaid balance of the full amount of this minimum
14 wage or overtime compensation, including interest thereon, reasonable attorney’s fees and
cost of the suit.”

15 133. California Labor Code § 1198, in pertinent part, provides:

16 “(t) the maximum hours of work and the standard conditions of labor fixed by the commission
17 shall be the maximum hours of work and the standard conditions of labor for employees. The
18 employment of any employee for longer hours than those fixed by the order or under
conditions of labor prohibited by the order is unlawful.”

19 134. By refusing to compensate PLAINTIFF and the CLASS for all hours worked, and for
20 overtime wages earned, DEFENDANTS violated those California Labor Code provisions cited
21 herein as well as the applicable IWC Wage Order, and their actions are therefore unlawful.

22 135. PLAINTIFF and the CLASS are entitled to receive overtime compensation for all hours
23 worked in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in
24 any workweek and the first eight hours worked on the seventh day of work in any one workweek at
25 the rate of no less than one and one have times the regular rate of pay for each employee. In
26 determining the regular rate of pay for each CLASS member, all remuneration paid to each, including
27 but not limited to *performance bonuses*, must be calculated.
28

1 136. As a direct and proximate result of the DEFENDANTS' unlawful conduct, as set forth
2 therein, PLAINTIFF and the CLASS have sustained damages, including loss of earnings for hours
3 worked, hours of overtime worked, in an amount to be established at trial.

4 137. Pursuant to California Labor Code §1194, PLAINTIFF and the CLASS are entitled to
5 recover unpaid overtime compensation and double time compensation, including interest thereon.

6 138. PLAINTIFF is also entitled to recover reasonable attorneys' fees and costs, pursuant to
7 California Labor Code §1194(a).

8 139. During the RELEVANT TIME PERIOD, defendants JLI, and LAND were and are the
9 PLAINTIFF'S and the CLASS employers and/or persons acting on behalf of the DEFENDANTS,
10 within the meaning of California Labor Code § 558, who violated or caused to be violated any section
11 of the wage order regulating the days and hours worked and, as such are individually liable to each
12 member of the CLASS for each such violations as set forth in the California Labor Code.

13 140. Labor Code § 558 imposes upon DEFENDANTS, for each initial violation, a penalty of
14 \$50.00 for each underpaid employee for each pay period for which the employee was underpaid in
15 addition to an amount sufficient to recover the underpaid wages, which shall be paid to each affected
16 employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS, for each subsequent
17 violation, a penalty of \$100.00 for each underpaid employee for each pay period for which the
18 employee was underpaid, in addition to an amount sufficient to recover the underpaid wages, which
19 shall be paid to each affected employee.

20 141. PLAINTIFF on behalf of himself and the CLASS seeks all available remedies for
21 DEFENDANTS' violations including any and all wages due, penalties, monies, interest, attorney's
22 fees, and costs to the extent permitted by law.

23 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

24 **SECOND CAUSE OF ACTION**
25 **FAILURE TO PROVIDE MEAL PERIODS**
26 **(In Violation of IWC Wage Order 7-2001, CAL. LAB. CODE §§ 226.7, 512)**
27 **(Against All DEFENDANTS)**

28 142. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

1 143. During the RELEVANT TIME PERIOD, the IWC Wage Order and California Labor Code
2 sections 226.7 and 512 were applicable to PLAINTIFF and the CLASS employed by
3 DEFENDANTS.

4 144. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS are and were
5 misclassified as “exempt” employees of DEFENDANTS and did not receive meal periods or
6 premium pay in lieu of meal periods.

7 145. By misclassifying PLAINTIFF and the CLASS as “exempt,” DEFENDANTS deprived
8 PLAINTIFF and the CLASS proper protections and benefits of the laws governing meal periods.

9 146. During the RELEVANT TIME PERIOD, DEFENDANTS were aware of, and under a duty
10 to comply with, California Labor Code §§226.7 and 512.

11 147. California Labor Code §226.7 provides:

12 “(a) No employer shall require any employee to work during any meal or rest period
13 mandated by an applicable order of the Industrial Welfare Commission.

14 (b) If an employer fails to provide an employee a meal period or rest period in accordance
15 with an applicable order of the Industrial Welfare Commission, the employer shall ay the
16 employee one additional hour of pay at the employee’s regular rate of compensation for each
17 work day that the meal or rest period is not provided.”

18 Moreover, California Labor Code §512 provides:

19 An employer may not employ an employee for a work period of more than five hours per day
20 without providing the employee with a meal period of not less than 30 minutes, except that if
21 the total work period per day of the employee is no more than six hours, the meal period may
22 be waived by mutual consent of both the employer and employee. An employer may not
23 employ and employee for a work period of more than 10 hours per day without providing the
24 employee with a second meal period no not less than 30 minutes, except that if the total hours
25 worked is no more than 12 hours, the second meal period maybe waived by mutual consent
26 of the employer and the employee only if the first meal period was not waived.

27 148. Sections 11 and 12 of IWC Wage Order 7 mandate that the employer provides all applicable
28 meal periods to employees.

1 149. Section 11 of the applicable IWC Wage Order provides in pertinent part:

2 “No employer shall employ any person for a work period of more than of not less than 30
3 minutes... Unless the employee is relieved of all duty during a 30-minute meal period, the
4 meal period shall be considered an “on duty” meal period and counted as time worked.

1 If an employer fails to provide an employee a meal period in accordance with the applicable
2 provisions of this order the employer shall provide the employee one (1) hour of pay at the
employee 's regular rate of compensation for each workday that the meal period is not
provided.

3 150. PLAINTIFF and the CLASS regularly and consistently worked eight (8) hours or more per
4 day but were not provided with an uninterrupted, thirty-minute meal period within the first five hours
5 of work each day. By failing to consistently provide PLAINTIFF and each member of the CLASS
6 an uninterrupted thirty-minute meal period within the first five hours of work each day,
7 DEFENDANTS violated the California Labor Code and applicable IWC Wage Order provisions.

8 151. During the RELEVANT TIME PERIOD, DEFENDANTS intentionally and willfully
9 required PLAINTIFF and the CLASS to work during meal periods and failed to compensate
10 PLAINTIFF and the CLASS for the full meal period premium for work performed during meal
11 periods.

12 152. PLAINTIFF is informed and believes and, on that basis, alleges, that DEFENDANTS have
13 never paid the one-hour compensation as a premium payment for PLAINTIFF or any member of the
14 CLASS due to their violation of the California Labor Code and applicable IWC Wage Order
15 provisions.

16 153. Defendant's conduct violates the applicable IWC Wage Order and California Labor Code
17 sections 226.7 and 512(a).

18 154. As a direct and proximate result of DEFENDANTS unlawful conduct, as set forth herein,
19 PLAINTIFF and the CLASS have sustained damages including loss of compensation resulting from
20 missed meal periods, in an amount to be established at trial.

21 155. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b),
22 PLAINTIFF and the CLASS are entitled to recover from DEFENDANTS one additional hour of pay
23 at the employee's regular rate of compensation for each workday the meal or rest period is not
24 provided. In determining the regular rate of pay for each CLASS member, all remuneration paid to
25 each, including but not limited to *performance bonuses*, must be calculated.

26 156. During the RELEVANT TIME PERIOD, defendants JLI and LAND were and are the
27 PLAINTIFF and the CLASS' employers and/or persons acting on behalf of the DEFENDANTS,
28

1 within the meaning of California Labor Code § 558, who violated or caused to be violated any section
2 of the wage order regulating the days and hours worked and, as such are individually liable to each
3 member of the CLASS for each such violations as set forth in the California Labor Code.

4 157. Labor Code § 558 imposes upon DEFENDANTS, for each initial violation, a penalty of
5 \$50.00 for each underpaid employee for each pay period for which the employee was underpaid in
6 addition to an amount sufficient to recover the underpaid wages, which shall be paid to each affected
7 employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS, for each subsequent
8 violation, a penalty of \$100.00 for each underpaid employee for each pay period for which the
9 employee was underpaid, in addition to an amount sufficient to recover the underpaid wages, which
10 shall be paid to each affected employee.

11 158. As a direct result of DEFENDANTS' violations alleged herein, PLAINTIFF and the
12 CLASS have suffered and continue to suffer loss of wages and compensation, all in amounts to be
13 shown according to proof at trial and within the jurisdiction limitations of this Court. PLAINTIFF
14 and the CLASS seek all available remedies for DEFENDANTS' violations including, but not limited,
15 to any and all wages due, penalties, monies, interest, attorney's fees, and costs to the extent permitted
16 by law.

17 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

18 **THIRD CAUSE OF ACTION**
19 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**
20 **(In Violation of IWC Wage Order 7-2001, CAL. LAB. CODE§ 226.7)**
21 **(Against All DEFENDANTS)**

22 159. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
23 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

24 160. During the RELEVANT TIME PERIOD, the IWC Wage Order and California Labor Code
25 sections 226.7 and 512 were applicable to PLAINTIFF and the Class employed by DEFENDANTS.

26 161. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS were and continue
27 to be misclassified as "exempt" employees of DEFENDANTS and did not receive rest periods or
28 premium pay in lieu of rest periods.

1 162. By misclassifying PLAINTIFF and the CLASS as “exempt,” DEFENDANTS deprived
2 PLAINTIFF and the CLASS proper protections and benefits of the laws governing rest periods.

3 163. During the RELEVANT TIME PERIOD, DEFENDANTS were aware of and under a duty
4 to comply with, California Labor Code §226.7 and Section 12 of Wage Order 7-2001.

5 164. California Labor Code. §226.7 states

6 “no employer shall require any employee to work during any meal or rest period mandated
7 by an applicable order of the Industrial Welfare Commission.”

8 Section 12 of Wage Order No. 7-2001 provides in relevant part that:

9 (A) Every employer shall authorize and permit all employees to take rest periods, which in
10 so far as practicable shall be in the middle of each work period., The authorized rest period
11 time shall be based on the total hours worked daily at the rate of ten (10 minutes net rest time
12 per four (4) hours or major fraction thereof. However, a rest period need not be authorized
13 for employees whose total daily work time is less than three and one-half (3 ‘A) hours.
14 Authorized rest period time shall be counted as hours worked for such there shall be no
15 deduction from wages.

16 165. During the RELEVANT TIME PERIOD, DEFENDANTS willfully required PLAINTIFF
17 and the CLASS to work four (4) or more hours without authorizing or permitting a ten (10) minute
18 rest period per each four (4) hours period worked.

19 166. During the RELEVANT TIME PERIOD, DEFENDANTS willfully required PLAINTIFF
20 and the CLASS to work during rest periods and failed to pay PLAINTIFF and the CLASS the full
21 rest period premium for work performed during rest periods.

22 167. If an employer fails to provide an employee a rest period in accordance with the applicable
23 provisions of this order, the employer shall pay the employee one (1) hour of pay at that employee’s
24 regular rate of compensation for each workday that the rest period is not provided.

25 168. During the RELEVANT TIME PERIOD, DEFENDANTS failed to pay PLAINTIFF and
26 the CLASS the full rest period premium due pursuant to California Labor Code section 226.7.

27 169. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b),
28 PLAINTIFF and the CLASS are entitled to recover from DEFENDANTS one additional hour of pay
at the employees’ regular rate of compensation for each workday that the rest period was not

1 provided. In determining the regular rate of pay for each CLASS member, all remuneration paid to
2 each, including but not limited to performance bonuses, must be calculated.

3 170. In committing the violations of state law as herein alleged, DEFENDANTS refused to
4 perform their obligations to authorize and permit rest periods and have also failed to pay rest premium
5 wages. As a direct result, PLAINTIFF and the CLASS have suffered, and continue to suffer,
6 substantial losses, including those related to the use and enjoyment of such compensation, wages,
7 and lost interest on such monies in seeking to compel DEFENDANTS to fully perform their
8 obligation under state law, all to their respective damage in amounts according to proof at trial and
9 within the jurisdictional limitations of this Court.

10 171. During the RELEVANT TIME PERIOD, defendants JLI and LAND are and/or were the
11 PLAINTIFF and the CLASS' employers and/or persons acting on behalf of DEFENDANTS within
12 the meaning of California Labor Code§ 558, who violated or caused to be violated, a section of Part
13 2, Chapter I, of the California Labor Code or any provision regulating hours and days of work in any
14 Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid
15 employee, which shall be paid to each affected employee, as set forth in Labor Code § 558.

16 172. Labor Code § 558 imposes upon DEFENDANTS for each initial violation a penalty of
17 \$50.00 for each underpaid employee for each pay period for which the employee was underpaid in
18 addition to an amount sufficient to recover the underpaid wages, which shall be paid to each affected
19 employee. Furthermore, Labor Code§ 558 imposes upon DEFENDANTS for each subsequent
20 violation a penalty of \$100 for each underpaid employee for each pay period for which the employee
21 was underpaid, in addition to an amount sufficient to recover the underpaid wages, which shall be
22 paid to each affected employee.

23 173. The CLASS, including PLAINTIFF, suffered and continue to suffer loss of wages and
24 compensation, all in an amount to be shown according to proof at trial and within the jurisdictional
25 limitations of this Court.

26 174. PLAINTIFF seeks all available remedies for DEFENDANTS' violations including, but not
27 to, any and all wages due, penalties, interest, attorney's fees, costs to the extent permitted by law.

28 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

FOURTH CAUSE OF ACTION
FAILURE TO INDEMNIFY FOR NECESSARY EXPENDITURES INCURRED IN
DISCHARGE OF DUTIES (VIOLATION OF CAL. LAB. CODE §§ 2802, 2804, 432.5)
(Against All DEFENDANTS)

175. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

176. During the RELEVANT TIME PERIOD, the California Labor Code §§ 432.5, and 2802 were applicable to PLAINTIFF and the CLASS employed by DEFENDANTS.

177. PLAINTIFF and the CLASS were and are entitled to the protections of California Labor Code §§ 432.5 and 2802.

178. Cal. Lab. Code §2802(a) provides in relevant part that:

“An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer....”

179. California Labor Code § 432.5 prohibits employers from requiring any applicant or employee to agree to any illegal employment term or condition. PLAINTIFF and the CLASS have/had no choice but to pay for all the costs incurred in using their own personal vehicles even if exclusively used for the DEFENDANTS’ business. DEFENDANTS would only provide a \$600.00 dollars vehicle stipend, regardless of the costs incurred by PLAINTIFF and the CLASS in using their own personal vehicles to conduct DEFENDANTS’ business. The actual costs incurred by PLAINTIFF and the CLASS far exceeds the nominal \$600.00 stipend provided by the DEFENDANTS. Such unconscionable terms of employment are illegal in this state.

180. DEFENDANTS engage in a policy and practice of compelling PLAINTIFF and the CLASS to bear the cost of running DEFENDANTS’ business. DEFENDANTS violated California Labor Code §§ 2802 and 432.5 by coercing the PLAINTIFF and the CLASS to accept use their own personal vehicles to conduct DEFENDANTS’ business without full reimbursement.

181. DEFENDANTS also required PLAINTIFF and the CLASS to regularly use their own personal cellphones to conduct DEFENDANTS’ business.

1 182. DEFENDANTS failed to indemnify PLAINTIFF and the CLASS based on the mileage
2 driven by each employee. The monthly \$600.00 stipend is a flat rate regardless of number of the
3 number of miles the PLAINTIFF and the CLASS drove and the associated costs.

4 183. None of the PLAINTIFFS received full reimbursement for the reasonable and necessary
5 costs they incurred in using their personal vehicles to conduct the DEFENDANTS' business because
6 their costs far exceed the nominal stipend.

7 184. During THE RELEVANT TIME PERIOD, as a result of the unlawful acts of
8 DEFENDANTS, PLAINTIFF and the CLASS have incurred expenditures and losses in an amount
9 to be determined at trial.

10 185. Pursuant to California Labor Code § 2802, DEFENDANTS are required to fully reimburse
11 PLAINTIFF and members of the CLASS for all expenses incurred by them in the performance of
12 their job duties.

13 186. DEFENDANTS also failed to fully reimburse PLAINTIFF and members of the CLASS for
14 the use of their personal cellphones to conduct DEFENDANTS' business.

15 187. PLAINTIFF and the CLASS suffered, and will continue to suffer, damages in amounts
16 according to proof at the time of trial as a direct and proximate result of DEFENDANTS' willful
17 conduct of requiring PLAINTIFFS to agree to illegal terms and conditions of employment and
18 DEFENDANTS' unlawful failure to fully reimbursement PLAINTIFF and the CLASS for the
19 vehicle and their personal cellphone use.

20 188. In failing to reimburse PLAINTIFF and the CLASS for the company vehicle, and the
21 cellphone, DEFENDANTS acted maliciously, oppressively, and despicably, with the wrongful
22 intention of causing injury and hardship to PLAINTIFF and the CLASS by reaping economic gain
23 at PLAINTIFF and the CLASS' expenses, in willful and conscious disregard of PLAINTIFFS'
24 statutory and regulatory rights.

25 189. Any waivers, contracts, or agreements, Defendants compelled and coerced Employees to
26 sign purporting to agree to pay for company vehicles, cellphones, and waived their rights to
27 indemnification, under California law, is void. Cal. Lab. Code § 2804.

28

1 190. PLAINTIFF and the CLASS are entitled to recovery from DEFENDANTS, and each of
2 them, the full amount of the necessary business-related expenses and costs incurred during the course
3 and scope of employment, losses, deductions, taxes, and withholdings incurred as a result of
4 DEFENDANTS' unlawful policies and practices compelling PLAINTIFFS to consent in writing to
5 illegal terms and conditions of employment, and, plus attorneys' fees and costs, interests accrued
6 from the date on which PLAINTIFF and the CLASS incurred such expenditures and/or the unlawful
7 deductions.

8 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

9
10 **FIFTH CAUSE OF ACTION**
11 **WAITING TIME PENALTIES**
12 **(In Violation of California Labor Code § § 201, 202, 203)**
13 **(Against All DEFENDANTS)**

14 191. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
15 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

16 192. At all times mentioned herein, PLAINTIFFS were employees of DEFENDANTS.
17 DEFENDANTS were subject to California law.

18 193. Cal. Lab. Code §201 provides in relevant part that: "[i]f an employer discharges an
19 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

20 194. Cal. Lab. Code §202 provides in relevant part that: "[i]f an employee not having a written
21 contract for a definite period quits his or her employment, his or her wages shall become due and
22 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of
23 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
24 quitting."

25 195. As alleged herein, DEFENDANTS failed to pay earned wages to PLAINTIFF and the
26 CLASS who are former employees of DEFENDANTS at the time they became due and payable.

27 196. DEFENDANTS failed to timely pay PLAINTIFF and the CLASS who are former
28 employees of DEFENDANTS, among other things, wages for all hours worked including all
overtime wages, bonuses, meal and rest period premiums, and indemnification for necessary
business-related expenses. Thus, DEFENDANTS violated Cal. Lab. Code §§201 and 202.

1 197. As a result of DEFENDANTS' unlawful acts, PLAINTIFF and the CLASS who are former
2 employees of DEFENDANTS' are entitled to recover, pursuant to Cal. Lab. Code §203, continuing
3 wages as a penalty from the due date thereof at the same rate until paid or until this action was
4 commenced; but for no more than 30 days.

5 198. DEFENDANTS willfully failed to provide PLAINTIFF and the CLASS with all wages due
6 and owing, including all regular and overtime wages, and meal and rest period premium wages, and
7 reimbursement for necessary business expenses, as specified by Labor Code §§ 201 and 202, as
8 alleged herein.

9 199. Consequently, pursuant to Labor Code section 203, DEFENDANTS are obligated to pay
10 PLAINTIFF and member of the CLASS that are former employees of the DEFENDANTS waiting-
11 time penalties equivalent to thirty (30) full working days' worth of wages because certain wages
12 were not paid within 30 days.

13 200. DEFENDANTS' failure to pay PLAINTIFFS that were former employees all wages due
14 were done with the wrongful and deliberate intention of injuring PLAINTIFFS, for improper motives
15 amounting to malice and in conscious disregard to PLAINTIFFS' rights.

16 201. DEFENDANTS' willful failure to pay PLAINTIFFS the wages due and owing each of
17 them constitutes violations of Labor Code §§ 201, 202, and 203.

18 202. PLAINTIFFS are each entitled to recover from DEFENDANTS the statutory penalty for
19 each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code
20 section 203.

21 203. PLAINTIFF seeks all available remedies for DEFENDANTS violation including but not
22 limited to, any and all wages due, penalties, monies, interest, attorneys' fees, and costs incurred in
23 this action to the extent permitted by law.

24 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

25 **SIXTH CAUSE OF ACTION**
26 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
27 **(In Violation of CAL. LAB. CODE §§ 226(a), 1174(d))**
28 **(Against All DEFENDANTS)**

1 204. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
2 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

3 205. Labor Code § 226(a) requires employers, including DEFENDANTS, to furnish their
4 employees with each wage payment an accurate, itemized writing that shows gross wages earned,
5 total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the
6 employee is paid, the name of the employee and the portion of his or her social security number as
7 required by law, all applicable hourly rates in effect during the pay period, and the corresponding
8 number of hours worked at each hourly rate by the employee.

9 206. During THE RELEVANT TIME PERIOD, DEFENDANTS knowingly and intentionally
10 failed to provide to the PLAINTIFF and the CLASS, the above-described writing required by Labor
11 Code § 226 through actions alleged herein, including a failure to provide total hours worked, the
12 correct applicable hourly rate, including overtime, and all wages earned. Specifically, the wage
13 statements of the PLAINTIFF and the CLASS does not include “off the clock” work and the overtime
14 hours because DEFENDANTS failed to keep records of actual time worked.

15 207. The PLAINTIFF and the class, has suffered and continue to suffer injuries, including
16 substantial losses related to the use and enjoyment of such wages, lost interest on such wages and
17 expenses and attorney’s fees in seeking to compel DEFENDANTS to fully perform their obligations
18 under state law, all to their respective damage in amounts according to proof at trial. Pursuant to
19 Labor Code §§ 226(e)(2) and 226(c)(2)(B)(i), PLAINTIFFS are deemed to have suffered injury as a
20 result of DEFENDANTS’ failure to provide accurate and complete information as required by Labor
21 Code § 226(a).

22 208. Labor Code § 226, in part, permits employees suffering injury to collect actual damages or
23 the amount specified in Labor Code§ 226. Thus, Labor Code§ 226(e) requires DEFENDANTS to
24 pay the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a
25 violation occurred and one hundred dollars (\$100.00) per employee for each violation in subsequent
26 pay periods, plus attorney's fees and costs, to each member of the CLASS, including PLAINTIFF,
27 who was injured by DEFENDANTS' failure to comply with Labor Code § 226(a). The exact amount
28 of the applicable penalty is all in an amount to be shown according to proof at trial.

1 209. In addition, Labor Code section 1174(d) requires an employer to keep, at a central location
2 in *the state* or at the plants or establishments at which employees are employed, payroll records
3 showing the hours worked daily by, and the wages paid to employees employed at the respective
4 plants or establishments. These records shall be kept on file for not less than three years.

5 210. Furthermore, Labor Code § 226(g) permits an employee to bring an action for injunctive
6 relief to ensure compliance with Labor Code § 226. Thus, PLAINTIFF and the CLASS additionally
7 seek injunctive relief to ensure compliance with Labor Code § 226 including, but not limited to, the
8 providing and maintenance of accurate itemized wage statements identifying, among other things,
9 all the hours worked and their corresponding rate for each pay period and the total net wages earned
10 during each pay period.

11 211. PLAINTIFF seeks all available remedies for DEFENDANTS' violations including, but not
12 limited to, any and all wages due, actual damages, penalties, payments pursuant to Labor Code §
13 226(e), monies, interest, attorney's fees, costs and injunctive relief.

14 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

15
16 **SEVENTH CAUSE OF ACTION**
17 **FAILURE TO PAY EARNED WAGES VIOLATION OF LABOR CODE § 200**
 (Against All DEFENDANTS)

18 212. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
19 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

20 213. DEFENDANTS wrongfully failed to pay the PLAINTIFF and former members of the
21 CLASS who were employees of DEFENDANTS' their earned wages, which PLAINTIFF and former
22 members of the CLASS were entitled to receive based on DEFENDANTS' Yearly Bonus ("YB").
23 In particular, DEFENDANTS engage in a policy and practice of failing to pay former employees
24 their pro rata share of the YB at the time of their termination. PLAINTIFF'S YB was 30% of his
25 Base Salary. The YB is dependent on achievement of his goals which were established 30 days after
26 the start of his employment and after the start of each fiscal year. The YB is eligible for payment
27 twice a year. The goals include a mix of Company goals (which include, goals related to sales,
28

1 EBITDA, installed base of users, consumer engagement, new product launches, and personal
2 objectives and key results (“Personal OKRs”).

3 214. California Labor Code § 200 defines wages as,

4 (a) “Wages” includes all amounts for labor performed by employees of every description,
5 whether the amount is fixed or ascertained by the standard of time, task, piece, commission
6 basis, or other method of calculation.

7 (b) “Labor” includes labor, work, or service whether rendered or performed under contract,
8 subcontract, partnership, station plan, or other agreement if the labor to be paid for is
9 performed personally by the person demanding payment.

10 215. The amount of earned but unpaid YB that the PLAINTIFF and the former members of the
11 CLASS are entitled to receive constitute “wages” within the meaning of § 200 of the California Labor
12 Code because PLAINTIFF and the former members of the CLASS performed labor and were
13 promised additional compensation as an incentive for the performance of such services to the benefit
14 of the DEFENDANTS. DEFENDANTS unjustly reaped the benefits of the services and labor
15 performed by PLAINTIFF and members of the CLASS who were former employees of the
16 DEFENDANTS but failed to pay them for their labor.

17 216. DEFENDANTS promised the PLAINTIFF and the CLASS, and continue to promise new
18 applicants that each Territory Sales Manager would receive, in addition to a “Base Salary”, “Yearly
19 Bonus”, which is 30% of the Base Salary.

20 217. During THE RELEVANT TIME PERIOD, DEFENDANTS had and continue to have a
21 legal obligation imposed by statute to pay the PLAINTIFF and the CLASS who are former
22 employees of the DEFENDANTS all earned wages and other compensation due to them. Such wages
23 and compensation belonged to the PLAINTIFF and the CLASS at the time the labor and services
24 were satisfactorily provided to DEFENDANTS, and accordingly, such wages and compensation are
25 the property of the PLAINTIFF and members of the CLASS, not the DEFENDANTS.

26 218. DEFENDANTS knowingly and intentionally failed to pay PLAINTIFF and members of
27 the CLASS that are former employees of the DEFENDANTS their pro rata share of the YB at the
28 time of their termination. Instead, DEFENDANTS converted PLAINTIFFS’ rightfully earned wages
and converted them to DEFENDANTS’ own use and benefits.

1 219. PLAINTIFF completed all of the terms of the bonus agreement, and he was entitled to
2 recover at least a pro-rata share of the promised bonus. See DLSE Opn. Letter No. 1987.06.03 (June
3 3, 1987). It has long been the rule that termination (whether voluntary or involuntary) does not
4 necessarily impede an employee's right to receive a commission/bonus where no other action is
5 required on the part of the employee to complete the sale leading to the commission payment.
6 (See *Willison v. Turner Resilient Floors* (1949) 89 Cal. App. 2d 589 [201 P.2d 406].) This concept
7 has been colorfully described as “He who shakes the tree is the one to gather the fruit.” (*E. A. Strout*
8 *Western Realty Agency, Inc. v. Lewis* (1967) 255 Cal. App. 2d 254, 259 [62 Cal. Rptr. 918],
9 quoting *Sessions v. Pacific Improvement Co.* (1922) 57 Cal.App. 1, 18 [206 P. 653]; See also DLSE,
10 Enforcement Policies and Interpretations Manual.) Lab. Code, § 219, prohibits an employer and
11 employee from agreeing, even voluntarily, to circumvent provisions of Lab. Code, §§ 200-243.

12 220. PLAINTIFFS and members of the CLASS have been injured by DEFENDANTS’
13 intentional conversion of such wages and compensation. PLAINTIFF and the CLASS are entitled
14 to immediate possession of all amounts converted by DEFENDANTS, with interest, as well as any
15 and all profits that DEFENDANTS acquired by their unlawful conversion.

16 221. DEFENDANTS’ action were oppressive, malicious, and fraudulent, and were concealed
17 by DEFENDANTS, and each of them, from the PLAINTIFF and the CLASS as hereinbefore alleged.

18 222. PLAINTIFF and the CLASS have been injured by DEFENDANTS’ oppressive, malicious,
19 intentional, and fraudulent actions, entitling PLAINTIFF and the CLASS to punitive and exemplary
20 damages.

21 223. PLAINTIFF on behalf of himself and the CLASS seeks all available remedies for
22 DEFENDANTS’ violations including any and all wages due, penalties, monies, interest, attorney’s
23 fees, and costs to the extent permitted by law.

24 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

25 **EIGHTH CAUSE OF ACTION**
26 **VIOLATION OF BUSINESS & PROFESSIONS CODE §17200**
27 **(Against All DEFENDANTS)**

28 224. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

1 225. The foregoing conduct, as alleged, violates the California Unfair Competition Law
2 (“UCL”), Cali. Bus. & Prof. Code §§ 17200 et seq., which prohibits unfair competition by
3 prohibiting, inter alia, any unlawful or unfair business acts or practices.

4 226. DEFENDANTS have systematically engaged in unlawful conduct such as wage and hour
5 violations in order to decrease their costs of doing business and gain an unfair advantage over their
6 competitors.

7 227. DEFENDANTS' Labor Code and IWC Wage Orders violations include, but are not limited
8 to, DEFENDANTS' (i) failure to provide proper meal and rest periods and pay PLAINTIFF and the
9 CLASS meal and rest premiums for missed, short, late and/or on-duty meal and rest periods; (ii)
10 failure to pay all overtime wages for all hours worked and under the control of DEFENDANTS; (iii)
11 failure to maintain accurate records including accurate records of DEFENDANTS' employees' hours
12 worked and wages earned; (iv) failure to provide accurate wage statements; (v) failure to reimburse
13 employees for all costs and expenses incurred and; (vi) failure to timely pay all wages due to their
14 employees during employment and after separation of employment including YB.

15 228. DEFENDANTS intentionally avoided paying PLAINTIFF and the CLASS all wages and
16 monies, including all overtime wages, and other financial obligations attached thereto to create for
17 DEFENDANTS an artificially lower cost of doing business and, thus, undercut their competitors and
18 establish and/or gain a greater foothold in the marketplace, all to the detriment of PLAINTIFF and
19 the CLASS.

20 229. DEFENDANTS lowered their costs of doing business by paying PLAINTIFF and the
21 CLASS amounts less than what was required under the California Labor Code and Wage Order of
22 the Industrial Welfare Commission, thereby unfairly forcing PLAINTIFF and the CLASS to perform
23 work without fair compensation and benefits.

24 230. DEFENDANTS held themselves out to PLAINTIFF and the CLASS as being
25 knowledgeable and adhering to the employment laws of California at all times relevant herein.
26 PLAINTIFF and the CLASS relied on and believed in DEFENDANTS' representation concerning
27 their conformance with the California laws alleged herein, all to their detriment.

231. DEFENDANTS' scheme to lower their payroll costs by violating the California Labor Code and Wage Order of the Industrial Welfare Commission, as alleged herein, constitutes "unlawful, unfair or fraudulent business act or practice," under Business and Professions Code § 17200 et seq. By engaging in the above-described acts and practices, DEFENDANTS have committed one or more acts of unfair competition within the meaning of Business & Profession Code §17200, et seq. DEFENDANTS, and each of them, have acted contrary to public policies and have engaged in other unlawful and unfair business practices in violation of Business & Profession Code §17200, et seq., depriving PLAINTIFF and the CLASS and all interested persons of rights, benefits, and privileges guaranteed to all employees under law

232. DEFENDANTS' conduct as herein alleged has damaged PLAINTIFF and the CLASS as described in this Complaint. The aforementioned acts of DEFENDANTS' individually, or by and through their managing agents, officers, and/o directors were willful, wanton, malicious, intentional, oppressive, and despicable, and were done in willful and conscious disregard of the rights of PLAINTIFFS, and each of them, and were done by managerial agents and employees of DEFENDANTS, or with the express knowledge, consent, and ratification of managerial employees of DEFENDANTS, with the intent to vex, injure, and annoy PLAINTIFFS, such as to constitute oppression, fraud, or malice pursuant to California Civil Code § 3294, entitling PLAINTIFFS to punitive and exemplary damages in a sum which is an amount appropriate to punish and set an example of DEFENDANTS, and each of them, to deter such conduct in the future, and to set an example for others.

233. PLAINTIFF and the CLASS suffered and continue to suffer loss of wages and monies, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court, as a direct result of DEFENDANTS' Labor Code and IWC Wage Orders violations.

234. PLAINTIFF seeks an order of this Court awarding restitution, injunctive relief and all other relief allowed under Business & Profession Code § 17200, et seq., plus interest, attorneys' fees and costs pursuant to, inter alia, Code of Civil Procedure Section 1021.5.

WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

NINTH CAUSE OF ACTION
RACE/ COLOR DISCRIMINATION IN VIOLATION OF FEHA

**(CALIFORNIAN GOVERNMENT CODE § 12940, *et seq.*)
(ALLEGED BY THE PLAINTIFF INDIVIDUALLY AGAINST ALL
DEFENDANTS)**

235. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

236. In relevant part, California Government Code section 12940(a) provides that it shall be unlawful for an employer to discriminate against an employee in the terms and conditions of his employment because of his race/color.

237. PLAINTIFF is an African Americans and thus a member of a protected class.

238. FEHA defines “employer” broadly to encompass “any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly”. California Government Code § 12926(d). Here, all DEFENDANTS were employers of PLAINTIFF as defined by FEHA because they regularly employed five or more persons. Furthermore, due to DEFENDANTS’ day-to-day managerial role, their right to hire, fire, discipline the employees, and their control over the terms and conditions of PLAINTIFF’S employment, DEFENDANTS are PLAINTIFF’s FEHA employer, or alternatively a joint employer, which provides employment pursuant to contract. *See Vernon v. State* (2004) 116 Cal.App.4th 114, 124.

239. As set forth above, DEFENDANTS discriminated against the PLAINTIFF because of his race/color. DEFENDANTS engaged in illegal, intentional discrimination on the basis of race/color, failed to recognize his achievements and promote him to leadership position, and terminated his employment. PLAINTIFF complained to DEFENDANTS regarding discrimination, but DEFENDANTS allowed the discrimination to continue.

240. As a direct, legal and proximate result of the discrimination, PLAINTIFF has suffered damages, including emotional distress, lost of wages, and other economic damages, in an amount to be proven at trial.

241. By reason of the conduct of DEFENDANTS, PLAINTIFF has necessarily retained attorneys to prosecute the action. Pursuant to California Government Code § 12965(b), as a result of DEFENDANTS’ pervasive discrimination, PLAINTIFF is entitled to recover damages for

1 emotional distress and economic harm, attorneys' fees, costs, and expert witness fees. PLAINTIFF
2 is entitled to attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

3 242. DEFENDANTS actions were ratified by managing agents, and were willful, malicious,
4 fraudulent, and oppressive, and were committed with wrongful intent to harm PLAINTIFF in
5 conscious disregard of his rights. PLAINTIFF is therefore entitled to recover punitive damages from
6 DEFENDANTS in an amount according to proof at trial.

7 **TENTH CAUSE OF ACTION**
8 **RACE/COLOR DISCRIMINATION IN VIOLATION OF PUBLIC POLICY**
9 **(ALLEGED BY THE PLAINTIFF INDIVIDUALLY AGAINST DEFENDANTS)**

10 243. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
11 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

12 244. PLAINTIFF is an African Americans and are thus a member of a protected class.

13 245. Under the FEHA Government Code section 12940 *et. seq.*, it is against public policy and
14 an unlawful employment practice for an employer because of a person's race/color, to refuse to hire
15 or employ the person, to refuse to select the person for a training program leading to employment, to
16 bar or discharge the person from employment or from a training program leading to employment, or
17 to discriminate against the person in compensation or in terms, conditions, or privileges of
18 employment.

19 246. DEFENDANTS knew, perceived, and/or believed that PLAINTIFF was an African
20 American and had the aforementioned protected status, described hereinabove.

21 247. At all times mentioned in this complaint, PLAINTIFF performed work competently for
22 DEFENDANTS.

23 248. DEFENDANTS made decisions adverse to the PLAINTIFF in regards to compensation
24 and terms, conditions and privileges of employment. DEFENDANTS actually and/or constructively
25 terminated the PLAINTIFF; refused to employ PLAINTIFF in a work environment free of
26 discrimination; refused to promote PLAINTIFF; subjected the PLAINTIFF to pretextual write-up;
27 failed to recognize his achievements; and subjected him to intense scrutiny.

28 249. The PLAINTIFF is informed and believes, and thereupon alleges, that his race/color as an
African American, was a motivating factor in DEFENDANTS' aforementioned decisions that were

1 adverse to PLAINTIFF in regards to compensation and terms, conditions and privileges of
2 employment. The PLAINTIFF's race/color, African American, was a motivating factor in
3 DEFENDANTS' aforementioned decision to actually terminate and fail to promote the PLAINTIFF.
4 DEFENDANTS refuse to hire African American applicants as there were only two (2) African
5 Americans in the entire division. DEFENDANTS also refused to employ PLAINTIFF in a work
6 environment free of discrimination by refusing to promote PLAINTIFF and refusing to acknowledge
7 his achievements leading to promotions and recognition.

8 250. As a direct, legal, and proximate cause of PLAINTIFF's aforementioned protected status,
9 described hereinabove, DEFENDANTS discriminated against the PLAINTIFF including, but not
10 limited to, the promoting employees, who did not have PLAINTIFF's protected status, to assume the
11 duties and responsibilities that PLAINTIFF had sought; the employees that DEFENDANTS
12 promoted and/or assigned to assume the duties and responsibilities that PLAINTIFF had and/or
13 sought were not as qualified as PLAINTIFF to assume those duties and responsibilities;
14 DEFENDANTS made discriminatory statements based on PLAINTIFF's aforementioned protected
15 status, as described hereinabove; DEFENDANTS gave no reason for the aforementioned adverse
16 actions, described herein above, and/or gave a vague, false, and/or illegal reason for the adverse
17 actions, DEFENDANTS did not follow their own internal rules and procedures in taking adverse
18 action against the PLAINTIFF; DEFENDANTS treated PLAINTIFF and other African American
19 employees differently than employees not in the same protected status; DEFENDANTS have a
20 pattern and practice of discriminating against employees in the aforementioned protected status of
21 PLAINTIFF, described hereinabove; and/or DEFENDANTS implemented policies and procedures
22 that had an adverse impact on PLAINTIFF and/or other African Americans with the same protected
23 status as PLAINTIFF, as described hereinabove.

24 251. As a direct, legal, and proximate result of PLAINTIFF's race/color, DEFENDANTS
25 refused to promote the PLAINTIFF, and terminated PLAINTIFF'S employment; failed to provide a
26 work environment free of discrimination; and discriminated against PLAINTIFF in the terms,
27 conditions, and privileges of employment.

1 252. As a direct, foreseeable, and proximate result of DEFENDANTS' conduct, as alleged
2 above, PLAINTIFF has suffered lost income, employment, and career opportunities, and have
3 suffered and continue to suffer other economic loss, the precise amount of which will be proven at
4 trial.

5 253. As a direct, foreseeable and proximate result of DEFENDANTS' conduct, as alleged above,
6 PLAINTIFF has suffered and continue to suffer great anxiety, embarrassment, anger, loss of
7 enjoyment of life, and severe emotional distress, the precise amount of which will be proven at trial.

8 254. The conduct which PLAINTIFF complains of in this complaint, and which is alleged above,
9 was carried out by the DEFENDANTS willfully, intentionally, and with oppression, malice and fraud
10 and was carried out with conscious disregard of PLAINTIFF's rights and as such PLAINTIFF is
11 entitled to an award of exemplary damages according to proof. The aforementioned conducted on
12 which punitive damages is alleged, as described hereinabove, was done with the advance knowledge
13 by an officer, director and/or managing agent of DEFENDANTS, of the unfitness of the employee
14 and the employee was employed with a conscious disregard of the rights and/or safety or others. The
15 aforementioned conducted on which punitive damages is alleged, as described hereinabove, was
16 authorized, ratified and/or committed by an officer, director, and/or managing agent of
17 DEFENDANTS.

18 255. As further direct, legal and proximate result of DEFENDANTS' conduct, PLAINTIFF was
19 caused to and did employ the services of counsel to prosecute this action, and is accordingly entitled
20 to an award of attorneys' fees according to proof.

21 **ELEVENTH CAUSE OF ACTION**
22 **FAILURE TO PREVENT RACE/ COLOR DISCRIMINATION IN VIOLATION OF FEHA**
(ALLEGED BY THE PLAINTIFF INDIVIDUALLY AGAINST JLI)

23 256. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
24 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

25 257. California Government Code § 12940(k) provides that it shall be an unlawful employment
26 practice for an employer to fail to take all reasonable steps necessary to prevent discrimination,
27 harassment and retaliation from occurring in the workplace.

28 258. PLAINTIFF is an African-American and is thus a member of a protected class.

1 259. FEHA defines “employer” broadly to encompass “any person regularly employing five or
2 more persons, or any person acting as an agent of an employer, directly or indirectly”. California
3 Government Code § 12926(d). Here, JLI was PLAINTIFF’s employer as defined by FEHA because
4 it regularly employed five or more persons. Furthermore, due to its day-to-day managerial role, right
5 to hire, fire, discipline the employees, and control over the terms and conditions of PLAINTIFF’S
6 employment, JLI is PLAINTIFF’s FEHA employer. *See Vernon v. State* (2004) 116 Cal.App.4th
7 114, 124.

8 260. JLI failed to provide PLAINTIFF with protections required under California Government
9 Code § 12940(k) by not taking immediate and sufficient action to correct discriminatory conduct
10 directed at the PLAINTIFF.

11 261. As a direct, legal and proximate result of the discrimination, PLAINTIFF has suffered
12 damages, including emotional distress, lost of wages, and other economic damages, in an amount to
13 be proven at trial.

14 262. By reason of the conduct of JLI, PLAINTIFF has necessarily retained attorneys to prosecute
15 the action. Pursuant to California Government Code § 12965(b), as a result of JLI’s pervasive
16 discrimination, PLAINTIFF is entitled to recover damages for emotional distress and economic
17 harm, attorneys’ fees, costs, and expert witness fees. PLAINTIFF is also entitled to attorneys’ fees
18 pursuant to California Code of Civil Procedure § 1021.5.

19 263. JLI’s actions were ratified by managing agents, and were willful, malicious, fraudulent, and
20 oppressive, and were committed with wrongful intent to harm PLAINTIFF in conscious disregard of
21 his rights. PLAINTIFF is therefore entitled to recover punitive damages from JLI in an amount
22 according to proof at trial.

23 **TWELFTH CAUSE OF ACTION**
24 **RETALIATION IN VIOLATION OF FEHA**
25 **(ALLEGED BY THE PLAINTIFF INDIVIDUALLY AGAINST ALL**
26 **DEFENDANTS)**

27 264. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
28 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

265. Under the FEHA, Government Code section 12940*et. seq.*, it is an unlawful employment
practice for an employer to discharge, expel, or otherwise discriminate against any person because

1 the person has opposed any practices forbidden under the Fair Employment and Housing Act or
2 because the person has filed a complaint, testified or assisted in any proceedings under the FEHA.

3 266. Under the FEHA, Government Code section 12940*et. seq.*, it is an unlawful employment
4 practice for an employer because of a person's race/color, to refuse to hire or employ the person, to
5 refuse to select the person for a training program leading to employment, to bar or discharge the
6 person from employment or from a training program leading to employment, or to discriminate
7 against the person in compensation or in terms, conditions, or privileges of employment.

8 267. PLAINTIFF opposed race/color discrimination by DEFENDANTS, complained that
9 DEFENDANTS committed race/color discrimination, protested race/color discrimination. When
10 PLAINTIFF engaged in the aforementioned activity, PLAINTIFF was engaged in protected activity
11 under the FEHA.

12 268. At all times mentioned in this complaint, PLAINTIFF performed work competently for
13 DEFENDANTS.

14 269. DEFENDANTS made decisions adverse to the PLAINTIFF in regards to compensation
15 and terms, conditions and privileges of employment. DEFENDANTS actually terminated the
16 PLAINTIFF, refused to continue to employ PLAINTIFF, refused to promote PLAINTIFF, and failed
17 to reinstate the PLAINTIFF and assure him that DEFENDANTS can provide a work environment
18 free of discrimination.

19 270. The PLAINTIFF's aforementioned protected activity, as described hereinabove, was a
20 motivating factor in DEFENDANTS' decisions that was adverse to PLAINTIFF in regards to
21 compensation and terms, conditions and privileges of employment. The PLAINTIFF's
22 aforementioned protected activity, as described hereinabove, was a motivating factor in
23 DEFENDANTS' decision to actually terminate the PLAINTIFF; refuse to continue to employ
24 PLAINTIFF, refuse to promote PLAINTIFF, and fail to reinstate the PLAINTIFF and assure him
25 that DEFENDANTS can provide a work environment free of discrimination and harassment.

26 271. As a direct, legal, and proximate cause of PLAINTIFF's aforementioned protected status,
27 described hereinabove, DEFENDANTS retaliated against PLAINTIFF including, but not limited to,
28 the following ways: DEFENDANTS hired and/or assigned employees, who did not have

1 PLAINTIFF's protected status, to assume the duties and responsibilities that PLAINTIFF had and/or
2 sought; the employees that DEFENDANTS hired and/or assigned to assume the duties and
3 responsibilities that PLAINTIFF had and/or sought were not as qualified as PLAINTIFF to assume
4 those duties and responsibilities; DEFENDANTS gave a pretextual reason for the aforementioned
5 adverse actions, described herein above, which is false; DEFENDANTS did not follow their own
6 internal rules and procedures in taking adverse action against the PLAINTIFF; DEFENDANTS
7 treated PLAINTIFF differently than employees not in the same protected status; DEFENDANTS
8 have a pattern and practice of discriminating against employees in the aforementioned protected
9 status of PLAINTIFF, described hereinabove; and/or DEFENDANTS implemented policies and
10 procedures that had an adverse impact on PLAINTIFF and other employees with the same protected
11 status as PLAINTIFF, as described hereinabove.

12 272. As a direct, legal, and proximate result of PLAINTIFF's aforementioned protected activity,
13 as described hereinabove, DEFENDANTS actually terminated PLAINTIFF, refused to continue to
14 employ PLAINTIFF, refused to promote PLAINTIFF, failed to reinstate PLAINTIFF and assure him
15 that DEFENDANTS can provide a work environment free of discrimination, and discriminated
16 against PLAINTIFF in the terms, conditions, and privileges of employment.

17 273. As a direct, foreseeable, and proximate result of DEFENDANTS' conduct, as alleged
18 above, PLAINTIFF has suffered lost income, employment, and career opportunities, and has suffered
19 and continues to suffer other economic loss, the precise amount of which will be proven at trial.

20 274. As a direct, foreseeable and proximate result of DEFENDANTS' conduct, as alleged above,
21 PLAINTIFF has suffered and continues to suffer great anxiety, embarrassment, anger, loss of
22 enjoyment of life, and severe emotional distress, the precise amount of which will be proven at trial.

23 275. The conduct which PLAINTIFF complains of in this complaint, and which is
24 alleged above, was carried out by the DEFENDANTS willfully, intentionally, and with oppression,
25 malice and fraud and was carried out with conscious disregard of PLAINTIFF's rights as and as such
26 PLAINTIFF is entitled to an award of exemplary damages according to proof. The aforementioned
27 conducted on which punitive damages is alleged, as described hereinabove, was done with the
28 advance knowledge by an officer, director and/or managing agent of DEFENDANTS, of the

1 unfitness of the employee and the employee was employed with a conscious disregard of the rights
2 and/or safety or others. The aforementioned conducted on which punitive damages is alleged, as
3 described hereinabove, was authorized, ratified and/or committed by an officer, director, and/or
4 managing agent of DEFENDANTS.

5 276. As further direct, legal and proximate result of defendants' conduct, PLAINTIFF was
6 caused to and did employ the services of counsel to prosecute this action, and is accordingly entitled
7 to an award of attorneys' fees according to proof.

8
9 **THIRTEENTH CAUSE OF ACTION**
10 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
11 **(ALLEGED BY THE PLAINTIFF INDIVIDUALLY AGAINST ALL**
12 **DEFENDANTS)**

13 277. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
14 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

15 278. Under California law, no employee, whether they are “at will” employee, or an employee
16 under a written or other employment contract, can be terminated for a reason that is in violation of a
17 fundamental public policy, or because they report behavior of their employer that they reasonably
18 believe constitutes discriminatory or illegal conduct. In recent years, the California Supreme Court
19 has interpreted a fundamental public policy to be any articulated constitutional, statutory provision,
20 or regulation that is concerned with a matter affecting society at large rather than a purely personal
21 or proprietary interest of the employee or the employer. Moreover, the public policy must be
22 fundamental, substantial and well established at the time of discharge.

23 279. PLAINTIFF’S exercising his legal rights to protest discrimination, and unlawful
24 employment practices as alleged, was a substantial factor in DEFENDANTS’ decision to terminate
25 him.

26 280. PLAINTIFF’S discharge was wrongful and it violated the fundamental public policy of this
27 State prohibiting discrimination on the basis of race/color and engagement in a protected activity.
28 This public policy is embodied in following public policy statutes:

- 1 a. California Fair Employment and Housing Act, California Government Code Section
2 12940(a), which prohibits discrimination and/or harassment against an employee based on
3 disability;
- 4 b. California Government Code Section 12940(i), which prohibits ratification of
5 unlawful conduct by an employer;
- 6 c. California Government Code Section 12940(j), under which an employer is strictly
7 liable for a supervisor's harassment of a subordinate, and for the unlawful acts of non-
8 supervisory employees and/or third persons whom the employer knows or should have known
9 have committed discriminatory or harassing acts against an employee;
- 10 d. California Government Code Section 12940(k), which requires an employer to take
11 all reasonable steps to prevent harassment and discrimination from occurring in the
12 workplace;
- 13 g. California Labor Code Section 1102.5, which prohibits an employer from retaliating
14 against an employee for reporting unlawful activity.

15 281. PLAINTIFF believes and thereon alleges that his race/color, and engaging in
16 protected activity by complaining of discrimination and protesting DEFENDANTS' unlawful acts,
17 were substantial and motivating factors in DEFENDANTS' conduct as alleged herein.

18 282. As a direct proximate result of the wrongful acts of DEFENDANTS, and each of
19 them, PLAINTIFF has suffered and continues to suffer actual, consequential and incidental financial
20 losses, including without limitation, loss of salary and benefits, emotional distress, humiliation,
21 mental anguish, anger, and embarrassment, all in an amount subject to proof at the time of trial.

22 283. The aforementioned acts of DEFENDANTS' individually, or by and through their
23 managing agents, officers, and/o directors were willful, wanton, malicious, intentional, oppressive,
24 and despicable, and were done in willful and conscious disregard of the rights of PLAINTIFF, and
25 each of them, and were done by managerial agents and employees of DEFENDANTS, or with the
26 express knowledge, consent, and ratification of managerial employees of DEFENDANTS, with the
27 intent to vex, injure, and annoy PLAINTIFF, such as to constitute oppression, fraud, or malice
28 pursuant to California Civil Code § 3294, entitling PLAINTIFF to punitive and exemplary damages

1 in a sum which is an amount appropriate to punish and set an example of DEFENDANTS, and each
2 of them, to deter such conduct in the future, and to set an example for others.

3
4 **FOURTEENTH CAUSE OF ACTION**
5 **WHISTLEBLOWER VIOLATION OF CAL. LAB. CODE § 1102.5**
6 **(ALLEGED BY THE PLAINTIFF INDIVIDUALLY AGAINST ALL**
7 **DEFENDANTS)**

8 284. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
9 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

10 285. At all times herein mentioned, PLAINTIFF was an employee of DEFENDANTS.
11 DEFENDANTS were subject to California law.

12 286. California Labor Code § 1102.5(a) provides:

13 “An employer, or any person acting on behalf of the employer, shall not make, adopt, or
14 enforce any rule, regulation, or policy preventing an employee from disclosing information
15 to a government or law enforcement agency, to a person with authority over the employee,
16 or to another employee who has authority to investigate, discover, or correct the violation or
17 noncompliance, or from providing information to, or testifying before, any public body
18 conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to
19 believe that the information discloses a violation of state or federal statute, or a violation of
20 or noncompliance with a local, state, or federal rule or regulation, regardless of whether
21 disclosing the information is part of the employee’s job duties.

22 (b) An employer, or any person acting on behalf of the employer, shall not retaliate against
23 an employee for disclosing information, or because the employer believes that the employee
24 disclosed or may disclose information, to a government or law enforcement agency, to a
25 person with authority over the employee or another employee who has the authority to
26 investigate, discover, or correct the violation or noncompliance, or for providing
27 information to, or testifying before, any public body conducting an investigation, hearing,
28 or inquiry, if the employee has reasonable cause to believe that the information discloses a
violation of state or federal statute, or a violation of or noncompliance with a local, state, or
federal rule or regulation, regardless of whether disclosing the information is part of the
employee’s job duties.

(c) An employer, or any person acting on behalf of the employer, shall not retaliate against
an employee for refusing to participate in an activity that would result in a violation of state
or federal statute, or a violation of or noncompliance with a local, state, or federal rule or
regulation.

287. DEFENDANTS retaliated against PLAINTIFF for blowing the whistle, complaining
about, opposing and protesting against DEFENDANTS’ unlawful activities, including but not limited
to complaining about DEFENDANTS’ discriminatory policies and practices, and DEFENDANTS’

1 implementation of the Retail Access Control Standards Program² (“RACS”).

2 288. The U.S. Food and Drug Administration (“FDA”) had “issued a warning letter to JUUL
3 Labs Inc. for marketing unauthorized modified risk tobacco products by engaging in labeling,
4 advertising, and/or other activities directed to consumers, including a presentation given to youth at
5 a school.” [https://www.fda.gov/news-events/press-announcements/fda-warns-juul-labs-marketing-](https://www.fda.gov/news-events/press-announcements/fda-warns-juul-labs-marketing-unauthorized-modified-risk-tobacco-products-including-outreach-youth)
6 [unauthorized-modified-risk-tobacco-products-including-outreach-youth](https://www.fda.gov/news-events/press-announcements/fda-warns-juul-labs-marketing-unauthorized-modified-risk-tobacco-products-including-outreach-youth). The FDA expressed
7 concern regarding JUUL’s outreach and marketing practices, including those targeted at students,
8 tribes, health insurers and employers.

9 289. To fight FDA claims that JLI has led the teen vaping epidemic, JLI entered into an
10 agreement with the FDA representing that RACS would be installed on all POS age-verification
11 system that will require all JLI retailers to comply. PLAINTIFF blew the whistle that RACS was
12 ineffective/impractical and does not promote the FDA’s goal of protecting the youth.

13 290. It is a violation of the California whistleblower statute, Cal. Labor Code. § 1102.5, and
14 public policy to unlawfully retaliate, punish, discharge, deny promotion, or take any adverse
15 employment action for refusing to violate the law and/or for protesting unlawful activities to a
16 government agency or the employee’s employer.

17 291. PLAINTIFF was a whistleblower pursuant to Cali. Labor Code § 1102.5, as PLAINTIFF
18 engaged in protected activities, as alleged in this Complain.

19 292. DEFENDANTS’ violated Cal. Labor Code § 1102.5(a) as it made, adopted, and enforced
20 rules, regulations and policies preventing PLAINTIFF from disclosing information to government
21 agency, or to a person with authority over the employee, or to another employee who has authority
22 to investigate, discovery, or correct the violation or non-compliances, where PLAINTIFF had
23 reasonable cause to believe PLAINTIFF’s employer was violating the law.

24 293. DEFENDANTS violated Cal. Labor Code § 1102.5(b) as they retaliated against
25

26 ² “RACS is an example of one way to comply with Enhanced Access Controls for the sale of JUUL
27 products. RACS automatically requires electronic ID scanning to verify the purchaser’s age and ID
28 validity, and limits the amount of product that can be purchased to reduce the potential for social
sourcing.” <https://www.juullabsretailer.com/racs-program/>

1 PLAINTIFF for protesting DEFENDANTS' unlawful actions to a person with authority over the
2 employee, or to another employee who has authority to investigate, discovery or correct the violation
3 or noncompliance, because DEFENDANTS deemed PLAINTIFF was complaining/or intended to
4 complaint to the appropriate agency regarding DEFENDANTS' unlawful conduct including but not
5 limited to race/color and JLI's RACS as alleged herein.

6 294. PLAINTIFF was retaliated against as alleged in this Complaint because PLAINTIFF
7 refused to participate in activities that would result in a violation of state or federal statutes (or
8 PLAINTIFF reasonably believed to be in violation. DEFENDANTS were thus in violation of
9 California Labor Code § 1102.5(c).

10 295. When PLAINTIFF was subjected to the adverse employment actions as identified in this
11 Complaint, DEFENDANTS' were substantially motivated by PLAINTIFF's complaints of violations
12 of state and/or federal law (or PLAINTIFF reasonably believed to be in violation), and said
13 complaints were substantial motivating factors and/or reasons in the decision to subject PLAINTIFF
14 to the aforesaid retaliatory adverse employment actions, in violation of California Labor Code §
15 1102.5.

16 296. By the acts and conduct of DEFENDANTS, PLAINTIFF has been directly and legally
17 caused to suffer actual damages pursuant to California Civil Code §3333 including, but not limited
18 to, loss of earning and future earning capacity, attorneys' fees and other pecuniary loss not presently
19 ascertained, for which PLAINTIFF will seek leave of court to amend when ascertained. PLAINTIFF
20 also claims such amounts as damages pursuant to Civil Code §3287 and/or §3288 and/or any other
21 provision of law providing for prejudgment interest.

22 297. As a further direct and legal result of the acts and conduct of DEFENDANTS,
23 PLAINTIFF, has been caused to, and did, suffer and continue to suffer severe emotional and mental
24 distress and anguish, humiliation, embarrassment, anger, shock, pain, discomfort, and anxiety. The
25 exact nature and extent of these injuries is presently unknown to PLAINTIFF, who will pray leave
26 of court to assert the same when they are ascertained.

27 298. The aforementioned acts of DEFENDANTS' individually, or by and through their
28 managing agents, officers, and/or directors were willful, wanton, malicious, intentional, oppressive,

1 and despicable, and were done in willful and conscious disregard of the rights of PLAINTIFF, and
2 each of them, and were done by managerial agents and employees of DEFENDANTS, or with the
3 express knowledge, consent, and ratification of managerial employees of DEFENDANTS, with the
4 intent to vex, injure, and annoy PLAINTIFF, such as to constitute oppression, fraud, or malice
5 pursuant to California Civil Code § 3294, entitling PLAINTIFF to punitive and exemplary damages
6 in a sum which is an amount appropriate to punish and set an example of DEFENDANTS, and each
7 of them, to deter such conduct in the future, and to set an example for others.

8 299. PLAINTIFF is entitled to a civil penalty up to ten thousand dollars (\$10,000) for each
9 violation of California Labor Code § 1102.5.

10 300. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF is entitled to reasonable
11 attorneys' fees and costs of said suit as specifically provided in Cal. C.C.P. § 1021.5. PLAINTIFF's
12 action enforces important rights affecting the public interest by bringing forth this lawsuit to ensure
13 DEFENDANTS refrain from unlawfully retaliating against employees for blowing the whistle,
14 thereby conferring a significant benefit on the general public and well being as a result. The necessity
15 and financial burden of this private enforcement, as well as the interest of justice, entitles
16 PLAINTIFF to reasonable attorneys' fees and costs under Cal. C.C.P. § 1021.5.

17 301. PLAINTIFF has been generally damaged in an amount within the jurisdictional limits of
18 this Court.

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21 **DEMAND FOR JURY TRIAL**

22 PLAINTIFF, on behalf of himself and the CLASS, demands a trial by jury on all issues so
23 triable.

24 **PRAYER FOR RELIEF**

25 PLAINTIFF, on behalf of himself and the CLASS, and all others similarly situated, prays for
26 relief and judgment against DEFENDANTS, jointly and severally, as follows:

- 27 1. For an Order certifying the proposed CLASS and/or any other appropriate subclasses
28 under CCP § 382;

2. For an Order appointing PLAINTIFF as the representative of the CLASS;
3. For an Order appointing counsel for PLAINTIFF as counsel for the CLASS;
4. For a finding that DEFENDANTS violated the provisions of the California Labor Code, including but not limited to, §§ 201-203, 226, 226.7, 432.5, 510, 512, 1194, 1198, and 2802 as to PLAINTIFF and the CLASS;
5. That the Court declare, adjudge, and decree that DEFENDANTS violated California Business and Professions Code §§ 17200 et seq. as alleged herein;
6. That the Court make an award to PLAINTIFF and the CLASS of damages for the amount of unpaid wages, including interest thereon and penalties, in amounts to be proven, in a formulaic manner, at trial;
7. For all wages earned and owing, including an amount sufficient to recover unlawfully deducted and unpaid wages;
8. For an appropriate injunctive relief, including an Order directing DEFENDANTS to cease and desist from improperly deducting wages from PLAINTIFFS;
9. For special damages, according to proof;
10. For actual damages pursuant to Labor Code § 226(e);
11. For liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon pursuant to Labor Code § 1194.2;
12. For reasonable attorneys' fees as provided by statute, including but not limited to California Code of Civil Procedures § 1021.5 and California Labor Code §§ 218.5, 226, 1194, 2802;
13. For pre-judgment and post-judgment interest as provided by law;
14. For an award of damages in the amount of unpaid compensation and monies including, but not limited to, actual damages, unpaid wages, overtime wages, regular wages, consequential, and incidental losses and damages in an amount according to proof;
15. For penalties as permitted under California Labor Code for violations of each of

the sections identified herein, including but not limited to §§ 226, 226.3, and 558;

16. For waiting time penalties and other penalties according to proof pursuant to California Labor Code section 203 for all employees who have left DEFENDANTS' employment;
17. For injunctive relief pursuant to California Labor Code section 226(h);
18. For cost of suit herein;
19. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from DEFENDANTS and determined to have been wrongfully acquired by DEFENDANTS as a result of violations of California Business & Professions Code sections 17200 et seq.;
20. For any other such relief as the Court deems just and proper due to the misconduct committed by the DEFENDANTS as alleged in this Complaint.
21. 4. For disgorgement of all monies which DEFENDANTS have illegally gained;
22. For Punitive Damages;
23. For restitution of unpaid wages to PLAINTIFF and all the CLASS;
24. For an award of damages equal to the unpaid losses and necessary business expenses incurred pursuant to Labor Code § 2802, including interest thereon;
25. For an award of additional hour of pay at the regular rate of compensation pursuant to Labor Code §226.7(b) for each meal and rest period not in compliance with the applicable Wage Order of the IWC;
26. For an award of additional hour of pay at the regular rate of compensation pursuant to Labor Code §226.7(b) for each meal and rest period not in compliance with the applicable Wage Order of the IWC;
27. For penalties and subsequent violation of a section of Chapter 1 of Labor Code, Div. 2, Part 2, or any provision regulating hours and days of work in any Order of the IWC for each underpaid employee for each pay period for which the employee was underpaid, in addition to an amount sufficient to recover the underpaid wages to be paid to each affected employee pursuant to Labor Code §558;

1 28. For an accounting to determine all money wrongfully obtained and held by
2 DEFENDANTS;

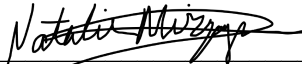
3 29. For all other Orders, findings, and determinations identified and sought in this Complaint
4 and/or the Court finds just and proper;

5 30. PLAINTIFF reserves the right to amend her prayer for relief.
6

7
8 Dated: June 13, 2023

MIRZAYAN LAW, APLC

9
10 By:



Natalie Mirzayan, Esq.

11 Attorney for PLAINTIFF MICHAEL STEWART II
12 and the CLASS
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EXHIBIT 1

MIRZAYAN LAW, APLC

June 13, 2023



VIA ONLINE FILING

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

VIA CERTIFIED MAIL

Juul Labs, Inc.'s Registered Corporate Agent
for Service of Process
CT Corporation System
330 N. Brand Blvd, Ste. 700
Glendale, CA 91203

Ross Land
47 East Yale Loops
Irvine, CA 92604-3336.

Juul Labs, Inc.

1000 Illinois Street
San Francisco, CA 94107

Re: **Notification Of Labor Code Private Attorney General Action, Labor Code 2698 et. seq.
Against Juul Labs, Inc., et. al.**

This notification is provided in advance of a civil action under Labor Code Private Attorneys General Act of 2004, ("PAGA"). This office represents Mr. Michael Stewart II ("Mr. Stewart" or "Plaintiff") who was employed by Juul Labs, Inc., ("JLI") and; ROSS LAND ("LAND") (collectively referred to as "Defendants") from approximately September 23, 2019, until his unlawful termination on July 27, 2022. This letter is a notice and a request, pursuant to California Labor Code §2699.3, that your agency investigates the claims in this civil action. If the agency does not intend to investigate the alleged violations, we specifically and respectfully request notification so that we can file our civil action to include our PAGA claims.

This impending action is brought on behalf of Mr. Stewart, who was employed as a Territory Manager¹ and other similarly situated and aggrieved current and former employees in California ("Employees" or "Aggrieved Employees") working for Defendants. Territory Managers engage in enforcing Defendants' contracts with established traditional and non-traditional retail outlets.

¹ Territory Managers are intentionally and willfully misclassified as "exempt" salaried employees even though they do not meet the exemption requirements under California Law. Territory Managers are required to submit time-cards on bi-weekly basis that are automatically populated 8 a.m. to 5 p.m. Territory Managers' job function does not fall under any of the limited exemptions. Defendants do not provide any explanation as to which category of exemptions Territory Managers are classified as "exempt", if any, to support the misclassification.

26632 Towne Centre Drive, Ste. # 300
Foothill Ranch, CA 92610
(949)-285-3550
mirzayanlaw@outlook.com

As such, Employees are required to travel to several retail outlets and stores to conduct Defendants' business. The impending action is to recover penalties for the following Labor Code Violations as detailed below:

Labor Code §§ 2802, 2804, 432.5: Labor Code §2802 requires an employer to indemnify its employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties, or of their obedience to the directions of the employer. Defendants engage in a policy and practice of compelling Plaintiff and the Aggrieved Employees to bear the cost of running Defendants' business. Defendants violated California Labor Code §§ 2802 and 432.5 by coercing the Plaintiff and the Employees to use their own personal vehicles to conduct Defendants' business without full reimbursement. Defendants also required Plaintiff and the Employees to regularly use their own personal cellphones to conduct Defendants' business. Defendants failed to indemnify PLAINTIFF and the CLASS based on the mileage driven by each employee. The monthly \$600.00 stipend is a flat rate regardless of number of the number of miles the Plaintiff and the Employees drove and the associated costs.

None of the Employees received full reimbursement for the reasonable and necessary costs they incurred in using their personal vehicles to conduct the Defendants' business because their costs far exceed the nominal stipend. During The Relevant Time Period, as a result of the unlawful acts of Defendants, Plaintiff and the Employees have incurred expenditures and losses in an amount to be determined at trial. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse Plaintiff and the Aggrieved Employees for all expenses incurred by them in the performance of their job duties. Defendants also failed to fully reimburse Plaintiff and the Aggrieved Employees for the use of their personal cellphones to conduct Defendants' business.

Plaintiff and the Aggrieved Employees suffered, and will continue to suffer, damages in amounts according to proof at the time of trial as a direct and proximate result of Defendants' willful conduct of requiring Plaintiff and the Aggrieved Employees to agree to illegal terms and conditions of employment and Defendants' unlawful failure to fully reimbursement Plaintiff and the Employees for the vehicle and their personal cellphone use.

In failing to reimburse Plaintiff and the Aggrieved Employees for the company vehicle, and the cellphone, Defendants acted maliciously, oppressively, and despicably, with the wrongful intention of causing injury and hardship to Plaintiff and the Employees by reaping economic gain at the Employees' expenses, in willful and conscious disregard of the Employees' statutory and regulatory rights.

Any waivers, contracts, or agreements, Defendants compelled and coerced Employees to sign purporting to agree to pay for company vehicles, cellphones, and waived their rights to indemnification, under California law, is void. Cal. Lab. Code § 2804.

Labor Code §§ 510, 1198, 558 Payment for Overtime: Labor Code sections 510 and 1198 requires employers to pay employees time and half (1.5) the employees' hourly rate for all hours worked in excess of eight hours per day and in excess of 40 hours per week; and double times the hourly rate for hours worked in excess of 12 hours per day, and eight hours on the seventh day

worked in a week. Defendants engage in a policy and practice of suffering their Territory Managers to work more than 8 hours per day and/or forty hours in a work week by failing to compensate them overtime and double time as required by law.

Defendants required Plaintiff and other similarly situated and Aggrieved Employees to work more than 8 hours per day and 40 hours in a week without overtime compensation. Therefore, Plaintiff and Aggrieved Employees were entitled to receive certain wages for overtime compensation, but were not paid any overtime hours as a result of misclassification as “exempt salaried employees” and as a result of Defendants’ policy and practice of compelling Territory Managers to work “off the clock.”

Defendants also failed to compensate Territory Managers for drive time, which is compensable under California Law. Defendants failed to compensate Territory Managers for driving time from their homes to their first stores, and also from their last stores to their homes. Territory Managers are required to be in the field from 8:00 a.m. until 5:00 p.m. Any drive time before 8:00 a.m. to the first store, which may take more than one hour, and any drive time from the last store after 5:00 p.m., which may take more than one hour, is not compensated.

Furthermore, Territory Managers are required to work from home to receive, review, and respond to their e-mails, create reports, presentations, business plans, individual performance plans, and various other tasks following their work in the field between 8:00 a.m. until 5:00 p.m. Territory Managers are prohibited from submitting their bi-weekly time-cards that reflect any hours beyond 40 hours per week or 8 hours per day. Defendants’ policy and practice of compelling employees to work “off the clock” caused Plaintiff and all other similarly situated and Aggrieved Employees to be underpaid for overtime wages beyond 8 hours per day and 40 hours per week.

Labor Code §§ 226.7 and 512: Defendants violated Labor Code § 226.7 which requires employers to provide a ten-minute rest period during each four-hour segment of work. Defendants further violated Labor Code § 226.7 and 512 by failing to provide Plaintiff and all other similarly situated and Aggrieved Employees with a meal period of not less than 30 minutes for each work period more than 5 hours per day and a second meal period of not less than 30 minutes for a work period of more than 10 hours-day. The meal period must be provided prior to the 5th hour of work.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee’s regular rate for each workday that a meal or rest period is not provided. Defendants required Plaintiff and other Aggrieved Employees to work during meal and rest periods and failed to compensate them properly for missed meal and rest periods including but not limited to failing to pay them any premium pay, additional wages, and/or penalties.

Labor Code §§ 201, 202, 203: California Labor Code section 201 provides that if an employer discharges an employee, the employee’s wages that have been earned and are unpaid at the time of discharge shall be paid immediately. Labor Code § 202 provides that if an employee quits, his or her wages become due no later than 72 hours thereafter or if an employee gives 72-hours previous

notice of his or her intention to quit, the employees' wages are due at the time of quitting. Labor Code §203 provides that if the employer willfully fails to pay any wages of an employee who is discharged or who quits, the employee's wages shall continue as a penalty from the due date of the payment of wages, at the same rate, until such wages paid, or an action commenced, but not more than 30 days.

Defendants did not pay Plaintiff, and all similarly situated Aggrieved Employees' wages were due when Defendants terminated their employment. Defendants willfully failed and refused, and continue to willfully refuse, to timely pay compensation and wages, including overtime, payments, premiums for meal and rest periods, and indemnification for business expenses as described above. As a result, Defendant is liable for wages due, interest, and waiting time penalties, any other statutory penalties, other damages together with attorneys' fees and costs.

Labor Code §§ 1174, 226, and 226.3: Labor Code requires employers to maintain accurate records for each employee's hours of work and to provide each employee with an accurate wage statements in writing setting forth, among other things: gross wages earned; total hours worked by the employee; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, all deductions made, and the name and address of the legal entity that is the employer

In addition, Labor Code section 1174(d) requires an employer to keep, at a central location in *the state* or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by, and the wages paid to employees employed at the respective plants or establishments. These records shall be kept on file for not less than three years.

Defendants engage in a policy and practice of willfully and intentionally failing to furnish its Employees with accurate itemized wage statements in compliance with the statutory requirement of §226(a). Instead, the wage statements Defendants provide Employees fail to meet the requirements of the statute for the following reasons: Territory Managers are not paid (straight or overtime) for all "off the clock" work because Defendants failed to keep records of actual time worked; wages statements do not accurately reflect hours of overtime actually worked and the corresponding pay rate; and wage statements fail to include accurate accounting of Territory Managers' meal/rest breaks and any premiums paid, if any.

By passing the cost of doing business to Employees, misclassifying Territory Managers as "exempt" salaried employees, failing to pay Employees for all hours worked, failing to pay Employees for meal and rest break premiums, and failing to pay Employees for overtime wages, Defendants have gained unfair advantage over their competitors and as a result become the second-largest tobacco company in the United States.

The purpose of this letter is to satisfy the requirements created by California Labor Code section 2699 prior to filing a lawsuit and seeking penalties allowed by law for the aforementioned violations. We look forward to determining whether the agency intends to take any action in reference to these violations.

Labor Code § 200: Defendants wrongfully failed to pay the Plaintiff and former Aggrieved Employees who were employees of Defendants' their earned wages, which the Employees were entitled to receive based on Defendants' Yearly Bonus ("YB"). In particular, Defendants engage in a policy and practice of failing to pay former employees their pro rata share of the YB at the time of their termination. Plaintiff's YB was 30% of his Base Salary. The YB is dependent on achievement of his goals which were established 30 days after the start of his employment and after the start of each fiscal year. The YB is eligible for payment twice a year. The goals include a mix of Company goals (which include, goals related to sales, EBITDA, installed base of users, consumer engagement, new product launches, and personal objectives and key results ("Personal OKRs")).

California Labor Code § 200 defines wages as,

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

The amount of earned but unpaid YB that the Plaintiff and the former Aggrieved Employees are entitled to receive constitute "wages" within the meaning of § 200 of the California Labor Code because Plaintiff and the former Employees performed labor and were promised additional compensation as an incentive for the performance of such services to the benefit of the Defendants. Defendants unjustly reaped the benefits of the services and labor performed by Employees but failed to pay them for their labor. Defendants promised the Plaintiff and the Employees and continue to promise new applicants that each Territory Sales Manager would receive, in addition to a "Base Salary", "Yearly Bonus", which is 30% of the Base Salary.

During The Relevant Time Period, Defendants had and continue to have a legal obligation imposed by statute to pay the Employees who are former employees of the Defendants all earned wages and other compensation due to them. Such wages and compensation belonged to the Employees at the time the labor and services were satisfactorily provided to Defendants, and accordingly, such wages and compensation are the property of the Employees, not the DEFENDANTS.

Defendants knowingly and intentionally failed to pay the Employees their pro rata share of the YB at the time of their termination. Instead, Defendants converted Plaintiffs' rightfully earned wages and converted them to Defendants' own use and benefits.

Employees completed all of the terms of the bonus agreement, and were entitled to recover at least a pro-rata share of the promised bonus. See DLSE Opn. Letter No. 1987.06.03 (June 3,

1987). It has long been the rule that termination (whether voluntary or involuntary) does not necessarily impede an employee's right to receive a commission/bonus where no other action is required on the part of the employee to complete the sale leading to the commission payment. (See *Willison v. Turner Resilient Floors* (1949) 89 Cal. App. 2d 589 [201 P.2d 406].) This concept has been colorfully described as “He who shakes the tree is the one to gather the fruit.” (*E. A. Strout Western Realty Agency, Inc. v. Lewis* (1967) 255 Cal. App. 2d 254, 259 [62 Cal. Rptr. 918], quoting *Sessions v. Pacific Improvement Co.* (1922) 57 Cal.App. 1, 18 [206 P. 653]; See also DLSE, Enforcement Policies and Interpretations Manual.) Lab. Code, § 219, prohibits an employer and employee from agreeing, even voluntarily, to circumvent provisions of Lab. Code, §§ 200-243.

As a result of Defendants’ actions, policies, and practices, Employees have been injured by Defendants’ intentional conversion of such wages and compensation.

Sincerely,

A handwritten signature in black ink, appearing to read "Natalie Mirzayan", with a stylized flourish extending from the end.

Natalie Mirzayan, Esq.

Attorney for Plaintiff

Michael Stewart II and Aggrieved Employees

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Tuesday, June 13, 2023 6:53 PM
To: mirzayanlaw@outlook.com
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-961752-23

Order Number: ORD-000229180

Total:\$75.00

Card Type: Visa

Date: 6/13/2023

Billing Information

Name: Natalie Mirzayan

Email: mirzayanlaw@outlook.com

Billing Address:

26632 Towne Centre Dr., Ste. 300

Foothill Ranch, California

92610

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Tuesday, June 13, 2023 6:53 PM
To: mirzayanlaw@outlook.com
Subject: Thank you for submission of your PAGA Case.

6/13/2023

LWDA Case No. LWDA-CM-961752-23

Law Firm : Mirzayan Law, APLC

Plaintiff Name : Michael Stewart II

Employer: Juul Labs, Inc.

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C01%7C%7C889d6c45eeb2479d6ab108db6c7a08ff%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C638223043609860774%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=5K0vfyP%2BNi9tEXB0IQuWZrIzAbT1tNgpraKMfK9QVU8%3D&reserved=0

EXHIBIT 2



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

June 13, 2023

Natalie Mirzayan
26632 Towne Centre Drive, Suite 300, Suite 300
Foothill Ranch, CA 92610

RE: **Notice to Complainant's Attorney**
CRD Matter Number: 202306-20973513
Right to Sue: Stewart II / Juul Labs, Inc et al.

Dear Natalie Mirzayan:

Attached is a copy of your complaint of discrimination filed with the Civil Rights Department (CRD) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, CRD will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the CRD does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Civil Rights Department



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

June 13, 2023

RE: **Notice of Filing of Discrimination Complaint**
CRD Matter Number: 202306-20973513
Right to Sue: Stewart II / Juul Labs, Inc et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to CRD is requested or required.

Sincerely,

Civil Rights Department



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

June 13, 2023

Michael Stewart II
26632 Towne Centre Dr., Ste. 300
Foothill Ranch, CA 92630

RE: **Notice of Case Closure and Right to Sue**
CRD Matter Number: 202306-20973513
Right to Sue: Stewart II / Juul Labs, Inc et al.

Dear Michael Stewart II:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective June 13, 2023 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this CRD Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Civil Rights Department

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
Civil Rights Department
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Michael Stewart II

CRD No. 202306-20973513

Complainant,

vs.

Juul Labs, Inc
1000 Illinois Street
San Francisco, CA 94107

Ross Land
47 East Yale Loops
Irvine, CA 92604

Respondents

1. Respondent Juul Labs, Inc is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming Ross Land individual as Co-Respondent(s).

3. Complainant Michael Stewart II, resides in the City of **Foothill Ranch**, State of **CA**.

4. Complainant alleges that on or about July 27, 2022, respondent took the following adverse actions:

Complainant was discriminated against because of complainant's color, race (includes hairstyle and hair texture) and as a result of the discrimination was terminated, denied hire or promotion, reprimanded, denied any employment benefit or privilege, other, denied work opportunities or assignments.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment and as a result was terminated, denied hire or promotion, reprimanded, other, denied work opportunities or assignments.

Additional Complaint Details: Plaintiff MICHAEL STEWART II, (hereinafter "PLAINTIFF") is an African American individual currently residing in San Diego, California. PLAINTIFF was a resident of the State of California, county of San Diego, throughout the time of his employment which gave rise to this action.

PLAINTIFF seeks to represent himself for Defendants Juul Labs, Inc., ("JLI"); ROSS LAND ("LAND") (collectively referred to as "DEFENDANTS") violation of California law, including the Fair Employment and Housing Act ("FEHA"), California Government Code § 12940, et seq.

PLAINTIFF is a former employee of DEFENDANTS who began his employment with DEFENDANTS from approximately September 23, 2019, until his unlawful termination on July 27, 2022 and held the position of a Territory Sales Manager in the State of California, San Diego Division.

DEFENDANTS Have Maintained a Pattern and Practice of Race/Color Discrimination That Caused PLAINTIFF to Experience Discrimination and Retaliation:

Although JLI is at the forefront of tobacco companies, their standard operating procedure is pre-Civil Rights Era race discrimination. DEFENDANTS systematically eliminated African American employees, failed to hire them, failed to promote them, and replaced them with employees who were not black.

The denials and abridgments of employment opportunities suffered by the PLAINTIFF is part of a general policy and practice of discrimination based on race/color in employment that has existed at JLI throughout the Relevant Time Period. These are not isolated examples of employment practices or individual decisions. To the contrary, these incidents are representative of DEFENDANTS' systematic discrimination against people of color and in favor of non-African American applicants and employees, to create an overwhelmingly white workforce.

The under-representation of minorities, specifically African Americans, throughout JLI's Territory Managers in California results from an intentional policy and practice of discrimination based on race/color, in hiring, territory assignment, promotion, and termination.

DEFENDANTS have pursued policies and practices on a continuing basis that have denied and restricted job opportunities to qualified African American applicants and employees.

PLAINTIFF was specifically harmed by these unlawful practices. Because of the DEFENDANTS' discriminatory policies PLAINTIFF was denied promotion, despite his qualification, to several positions to which he applied and was interviewed. LAND misled PLAINTIFF into believing that he would be offered a promotion based on his qualification without regard to his race/color. LAND asked PLAINTIFF to keep him informed on any promotional opportunities that he was pursuing. LAND misrepresented to the PLAINTIFF that he would do anything to help him move up within the company. PLAINTIFF, relying on LAND's misrepresentation, e-mailed LAND about multiple promotions that he was well qualified for. Unfortunately, PLAINTIFF would receive no response from LAND.

PLAINTIFF was misled to believe that DEFENDANTS, and specifically LAND, would not discriminate against him. But for discriminating against PLAINTIFF, PLAINTIFF would have been promoted. LAND would always praise PLAINTIFF and his qualification. Assure the PLAINTIFF that he was valuable, talented, and his knowledge and expertise would certainly get him promoted. Specifically, LAND assured the PLAINTIFF during their bi-weekly one-to-one meetings, that "it wasn't a matter of if he would get promoted, but when".

1 In fact, even prior to PLAINTIFF's interview, the hiring team completed their due diligence
2 painstakingly on PLAINTIFF; carefully studying his qualification and success in prior
3 positions. During the third and final interview, PLAINTIFF went to JLI's office in Carlsbad
4 and was personally interviewed with JAMES ULRICH ("ULRICH"), the District Sales
5 Manager, and LAND. Throughout the interview process, PLAINTIFF made it clear and
6 stressed his reasoning that his sole purpose in resigning from his employment at the time
7 with R.J. Reynolds Tobacco Company was to be promoted. DEFENDANTS understood
8 PLAINTIFF's priorities of being promoted and his driving force to resign his position and
9 purported to treat PLAINTIFF fairly without discrimination on the basis of his race/color.
10 Specifically, LAND expressly promised the PLAINTIFF that he would be promoted "within
11 the first year at JUUL." In fact, LAND admitted during PLAINTIFF's interview that given
12 PLAINTIFF's qualification he should be hired at a higher-ranking position and not just a
13 Territory Sales Manager.

14 During his 2021 First Half Performance Evaluation, his direct manager LAND described his
15 performance as a "very solid performance" and "very impressive". "Mike's greatest strength
16 is his ability to navigate conversations around the tobacco/vape industry. His experience
17 creates a real advantage when communicating with retailers." "The quality of his work is very
18 good."

19 During his 2021 Second Half Performance Evaluation, his direct manager BEHAL
20 complemented his knowledge: "Michael is very knowledgeable of tobacco business. He can
21 have very productive conversations with retailers. I am looking forward to Michael taking a
22 team leader role, getting better at communicating within our team." "Michael performed
23 above and over delivered on the 2nd half goal."

24 Contrary to the DEFENDANTS' representation, PLAINTIFF was pigeonholed. PLAINTIFF
25 felt like it was Groundhog Day at JUUL, with the same false promises being made and going
26 unfulfilled. PLAINTIFF was being discriminated against, overused with no reward in sight.

27 In accepting the position, PLAINTIFF believed that he would be provided with the same
28 opportunities for promotion like any other non-African American hard-working employee.
However, PLAINTIFF was held back because of DEFENDANTS' discriminatory policies and
practices including, without limitation DEFENDANTS' reliance on subjective, arbitrary,
standardless, and unvalidated criteria in making promotion decisions, focusing on whether
applicants properly reflect the predominantly white image rather than whether they would be
responsible, effective Account, or Division Managers who could perform their jobs well.

Because of PLAINTIFF's repeated complaints that he was being discriminated against,
PLAINTIFF was offered sham interviews to several possessions to which he applied.

However, PLAINTIFF was passed on for every opportunity that he applied for, and every
single position was given to someone of a non-African American race. Clearly, that was not
a coincident. PLAINTIFF applied to numerous jobs, all of which were offered to non-African
American applicants/employees. Among the jobs PLAINTIFF applied are:

1. Division Manager OC/San Diego, CA;
2. Division Manager Los Angeles, CA;
3. Division Manager Texas/Louisiana;
4. Distribution Manager – Atlanta, GA;
5. Distribution Manager – St. Louis, MO;
6. Distribution Manager – Chicago, IL;
7. Category Manager – West Region;

- 1 8. Sales Enablement Associate;
2 9. Performance Manager; and
3 10. Distribution Manager – Texas.

4 As time passed, PLAINTIFF became more and more frustrated with the discriminatory
5 treatment and realized that no matter how hard he worked, he would never get promoted.
6 PLAINTIFF realized that to get a promotion, he would have to be a non-African American.
7 PLAINTIFF expressed his views to management, which led to his pretextual write up and
8 termination.

9 PLAINTIFF was not only discriminated against in promotion, but also in the terms and
10 conditions of his employment. PLAINTIFF would be written-up and reprimanded if he ever
11 asked for a day off. But that same standard did not apply to non-African Americans. For
12 instance, on June 9, 2022, PLAINTIFF called off work. The division manager BEHAL had
13 done the very same thing wherein he called off work on June 9-10, 2022. However, BEHAL,
14 a non-African American, was not subjected to the same discriminatory treatment that
15 PLAINTIFF was subjected to.

16 DEFENDANTS relied on subjective, race-based, and stereotypical criteria in making
17 decisions in territory assignments, and promotion (e.g., overworking black employees
18 without recognition or promotion). Not only did PLAINTIFF handle his own territory, but he
19 was overseeing two territories for more than two (2) years. Instead of recognizing his
20 achievement and dedication, he was discriminated against, retaliated, and terminated all
21 because of PLAINTIFF's race/color.

22 DEFENDANTS were targeting white candidates for recruitment and promotion, both
23 systemically and individually (e.g., recognizing the achievements of white Territory Sales
24 Managers, and encouraging them to apply to become Account Managers/Division
25 Managers), but avoiding, ignoring equally qualified African Americans from applying, as was
26 done to PLAINTIFF.

27 In fact, some Division Manager roles were being "gifted" to employees without even allowing
28 employees of color to apply and interview for them. For instance, in December 2020, all
employees had an All-Hands call, which is a companywide call. During this call, there was
an announcement that certain people had received promotions. Frustrated from the
discriminatory policies, PLAINTIFF called LAND immediately following the All-Hands call
complaining of the same. LAND admitted that those promotions weren't even listed on the
internal website for application and that they were handed to those that were chosen. Not
only PLAINTIFF was offered sham interviews to silence him from complaining about
discrimination, PLAINTIFF was not offered a fair opportunity to apply to certain other jobs.
PLAINTIFF was not silenced, and he expressed his views that it wasn't fair that certain
employees of non-African American race wouldn't even have to go through the interview
process. Promotions were just "gifted" to them on the basis of their appearance, as
opposed to their qualifications for the job, despite the fact that other African American
employees, like PLAINTIFF, were more than deserving of the opportunity to move into one
of those roles.

It is difficult to phantom that only two (2) African American employees worked for
DEFENDANTS in the entire West Region where PLAINTIFFS worked. The two African
Americans were: 1) the PLAINTIFF; and 2) a former Territory Sales Manager ANDRE

1 ROUGEAU ("ROUGEAU"). These statistics are appalling in the light of the fact that the
entire West Region consists of more than 35 employees.
2 Similar to PLAINTIFF, ROUGEAU, he too was not offered any promotions during his tenure
at JLI despite his tenure (more than 7 years with JLI) and his accomplishment being a highly
3 distinguished member of the West Region.

1 VERIFICATION

2 I, **Natalie Mirzayan**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On June 13, 2023, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Foothill Ranch, CA**
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