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and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ORANGE**

MICHAEL STEWART II, individually and on ) CASE NO.: 30-2023-01331620-CU-OE-CXC  
behalf of all current and former similarly situated )  
employees in the State of California, )

Plaintiffs,

) ASSIGNED FOR ALL PURPOSES TO:  
) Randall J. Sherman

) Dept.: CX-105

v.

) **[AMENDMENT AS A MATTER OF**  
) **RIGHT PURSUANT TO LAB CODE**  
) **§ 2699.3(a)(2)(C)] TO ADD THE 15<sup>TH</sup>**  
) **CAUSE OF ACTION FOR PENALTIES**  
) **PURSUANT TO LABOR CODE § 2699]**

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

Defendants.

) **FIRST AMENDED 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**

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- ) (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);  
) 5. WAITING TIME PENALTIES  
) (VIOLATION OF CALIFORNIA  
) LABOR CODE § § 201, 202, 203);  
) 6. FAILURE TO PROVIDE  
) ACCURATE ITEMIZED WAGE  
) STATEMENTS (VIOLATION OF  
) CALIFORNIA LABOR CODE §§  
) 226(a), 1174;  
) 7. FAILURE TO PAY EARNED  
) WAGES VIOLATION OF LABOR  
) CODE § 200;  
) 8. VIOLATION OF BUSINESS &  
) PROFESSIONS CODE §17200;  
) 9. RACE/COLOR DISCRIMINATION  
) IN VIOLATION OF FEHA;  
) 10. RACE/COLOR DISCRIMINATION  
) IN VIOLATION OF PUBLIC  
) POLICY;  
) 11. FAILURE TO PREVENT RACE/  
) COLOR DISCRIMINATION IN  
) VIOLATION OF FEHA;  
) 12. RETALIATION IN VIOLATION  
) OF FEHA;  
) 13. WRONGFUL TERMINATION IN  
) VIOLATION OF PUBLIC POLIC;  
) 14. WHISTLEBLOWER VIOLATION  
) OF CAL. LAB. CODE § 1102.5;  
) 15. PENALTIES, PURSUANT TO  
) LABOR CODE § 2699 FOR  
) VIOLATIONS OF LABOR CODE  
) §§ 2802, 2804, 432.5, 510, 1198, 558,  
) 226.7, 512, 201. 202, 203, 1174, 226,  
) 226.3  
)  
) [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     1. Plaintiff MICHAEL STEWART II, (hereinafter “PLAINTIFF”) is an African American  
2 individual currently residing in San Diego, California. PLAINTIFF was a resident of the State of  
3 California, county of San Diego, throughout the time of his employment which gave rise to this  
4 action.

5     2. PLAINTIFF brings causes of action (1 through 8) on behalf of himself and similarly  
6 situated current and former employees in the State of California (hereinafter “CLASS” or  
7 “PLAINTIFFS”) complains of Defendants Juul Labs, Inc., (“JLI”); ROSS LAND (“LAND”) and  
8 DOES 1 to 50, inclusive (collectively referred to as “DEFENDANTS”) and brings this Class and  
9 Representative Action to recover, among other things, damages, indemnification of business  
10 expenses, wages unlawfully deducted, injunctive relief, penalties for failure to comply with various  
11 California Labor Code sections and the Industrial Welfare Commission Wage Order 7-2001, (“IWO  
12 Wage Order 7”), interest, restitution, attorneys’ fees, and costs, and any other appropriate relief for  
13 DEFENDANTS’ systematic pattern of violations of California law which contributed to JLI’s  
14 deliberate unfair competition.

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

18     4. PLAINTIFF is a former employee of DEFENDANTS who began his employment with  
19 DEFENDANTS from approximately September 23, 2019, until his unlawful termination on July 27,  
20 2022 and held the position of a Territory Sales Manager in the State of California, San Diego Division.

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

24     6. PLAINTIFFS are current and former employees of DEFENDANTS, who hold the position of  
25 Territory Sales Managers, or similar titles, for a period of time within the four (4) years preceding the  
26 filing of this action who were also intentionally misclassified as “exempt” employees by  
27 DEFENDANTS.  
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1                   **B. Defendants**

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

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

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

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

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

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

26           13. PLAINTIFFS are unaware of the true names and capacities, whether individual,  
27 corporate, associate, or otherwise of the defendants sued herein as DOES 1 through 50, inclusive,  
28 and for that reason PLAINTIFFS sue said defendants by such fictitious names pursuant to § 474 of



1 the California Code of Civil Procedure. PLAINTIFF will file and serve an amendment to this  
2 Complaint alleging the true names and capacities of these fictitiously named defendants when  
3 PLAINTIFF knows such true names and capacities. PLAINTIFFS are informed and believe, and  
4 based thereon allege, that each of the DOE Defendants are in some manner liable to PLAINTIFFS  
5 for the events and actions alleged herein. JLI, LAND, and DOES 1 through 50, inclusive, are referred  
6 to collectively herein as “DEFENDANTS.”

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

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

21 16. LAND’s conduct forms a significant basis for the PLAINTIFFS’ claims alleged herein.  
22 LAND is sued individually pursuant to Cal. Labor Code § 558, and 588.1 which defines “employer  
23 or other person acting on behalf of an employer” to include a “natural person who is an owner,  
24 director, officer, or managing agent of the employer.” LAND is “director, officer or managing agent  
25 of the employer.”

26 17. Each of the defendants, JLI, and LAND is a “person” as defined in California Labor  
27 Code § 2699(b), which is defined having “the same meaning as defined in Section 18.”  
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1        18. Each of the defendants, including LAND, in performing their duties, knew that their  
2 actions were unlawful and intentionally acted anyway by, *inter alia*, misclassifying PLAINTIFFS as  
3 “exempt” and thereby denying PLAINTIFFS their rights under California law.

4        19. Furthermore, LAND is sued and liable individually for his own unlawful conduct under  
5 Unfair Completion Law (“UCL”) wherein the individual need not be an agent of an employer (or of  
6 the corporate defendants specifically) to be liable for conversion, or for unfair competition. *See*  
7 *Manser v. Sierra Foothills Pub. Util. Dist.*, No. 1:08-cv-1250-LJO-SMS, 2008 WL 5114619, at \*8  
8 (E.D. Cal. Dec. 4, 2008) (“An individual may be liable for his or her own conduct under the UCL.”)

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

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

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

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

26        24. PLAINTIFFS are informed and believe, and based thereon allege that at all times  
27 relevant herein, each of the DEFENDANTS, whether named or fictitious, was an employer, was the  
28 principle, agent, co-conspirator, partner, joint venturer, officer, director, controlling shareholder,

1 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of each  
2 of the other DEFENDANTS named herein, and, in doing the acts and in carrying out the wrongful  
3 conduct alleged herein, was engaged with some or all of the other DEFENDANTS in a joint  
4 enterprise for profit, and bore such other relationships to some or all of the other DEFENDANTS so  
5 as to be liable for their conduct with respect to the matters alleged in this Complaint.

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

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

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

27 28. At all relevant times herein, PLAINTIFFS were employed by DEFENDANTS under  
28 employment agreements that were partly written, partly oral, and partly implied. In perpetrating the

1 acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to and in  
2 furtherance of their policies and practices of not paying PLAINTIFFS for all hours worked, including  
3 overtime; failing to provide compliant meal periods; failing to authorize and permit rest periods;  
4 failing to provide accurate itemized wage statements; failure to timely pay wages due upon  
5 termination of employment; failing to reimburse and indemnify PLAINTIFFS for expenditures in  
6 discharge of their duties; failing to properly maintain records; requiring employees and applicants to  
agree to illegal employment terms and conditions.

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

10 30. PLAINTIFF brings this lawsuit seeking injunction, restitution, and monetary relief  
11 against DEFENDANTS on behalf of himself and all other current and former employees of  
12 DEFENDANTS to recover, among other things, restitution, unpaid wages, interest, penalties,  
13 liquidated damages, attorney’s fees and costs pursuant to California Labor Code 201, 202, 203, 218.6,  
14 226, 226.3, 226.7, 432.5, 510, 512, 558, 1194, 1198, and 2802, for penalties pursuant to Labor Code  
15 § 2699, and the Business and Professions Code § 17200 *et seq.*

### 16 **JURISDICTION**

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

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

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1 39. Through the Territory Sales Managers, JLI maintains contact with their customers (*i.e.*,  
2 the retail outlets). Territory Sales Managers are described as the "eyes and ears" of JLI within their  
3 territories.

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

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

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

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

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

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

27 46. Upon information and belief, each iPad is equipped with Wi-Fi device, and a tracking  
28 GPS device, and all entries into the iPad are live and can be viewed by management at any point in  
time. Specifically, each visit to any retail outlet entered into the CRM software is time-stamped in  
local time which means, each Territory Sales Manager's time and whereabouts is accounted for.

Therefore, accounting each Territory Sales Manager's time for the purpose of compensation for all hours worked, could have been easily accomplished.

47. At the conclusion of each store visit, DEFENDANTS' policies mandate that the Territory Sales Manager report that visit through CRM software ("CRM"). To report the visit and ensure that the assignments at each store throughout California are uniformly completed, each Territory Sales Manager is required to answer a series of questions confirming strict compliance with 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.

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

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

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

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

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

53. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS engaged and continue to engage in a uniform policy and systematic scheme of wage abuse against

1 PLAINTIFFS. This scheme involved, *inter alia*, misclassifying these positions as “exempt”  
2 managerial employees for the sole purposes of avoiding payment of overtime compensation, when  
3 in fact, PLAINTIFFS were “non-exempt,” non-managerial employees according to California Law.

4 54. DEFENDANTS misclassified PLAINTIFF along with other current and former  
5 Territory Managers as “Managers” and according to DEFENDANTS were exempt from state and  
6 federal laws mandating overtime wages, accurate itemized wage statements documenting overtime  
7 hours earned, and meal and rest breaks.

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

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

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

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

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



1 57. PLAINTIFFS' duties contained minimal outside sales activities, hardly qualifying as  
2 sales, such as, occasionally presenting new sales contracts when a retail store's initial contract is  
3 modified by DEFENDANTS.

4 58. DEFENDANTS required PLAINTIFF and the CLASS of Territory Sales Managers to  
5 spend more than half of their time at work on ensuring retail stores' compliance with already existing  
6 sales contracts, re-setting of products, making phone calls to retail stores to inform them of  
7 manufacturer price increases, product re-calls, and other non-sales activities such as attending  
8 mandatory team meetings, and management "work-with." PLAINTIFF and the CLASS of Territory  
9 Managers could not and did not, on purely quantitative basis, spend more than 50% of their time  
10 involved in activities directly related to sales, as activities incidentally related to sales do not meet  
11 the exemption under California law.

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

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

23 60. Therefore, because all decision about tobacco programs (*e.g.*, promotions, pricing, and  
24 contracts) for franchise and non-franchise outlets are made at the account headquarter level, Key  
25 Account Managers and Account Managers call on the account headquarter for franchise and non-  
26 franchise outlets. That leaves only a limited number of outlets, "independently owned and operated  
27 outlets" that can make all decisions about tobacco programs (*e.g.*, promotions, pricing, and contracts)  
28 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

1 *exempt sales activity* (obtaining orders or contracts for products) performed by Territory Sales  
2 Managers at the outlet level to activities “incidental to sales” which do not count as “sales activity.”

3 62. More specifically, *even if* DEFENDANTS allege that all of the “4Ps<sup>1</sup>” the PLAINTIFF  
4 and Territory Sales Managers perform qualify as “sales activity” for purposes of determining  
5 whether the Territory Sales Manager’s position falls under the outside sales exemption, the fact  
6 that decisions about tobacco programs (e.g., promotion, pricing, and contracts) are made at the  
7 headquarter level for franchise and non-franchise outlets, Defendants cannot prove that  
8 PLAINTIFF and Territory Sales Managers spent *more than 50 percent* of their working hours at  
9 independent outlets.

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

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

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

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

28 <sup>1</sup> Product availability, Placement/Presence, Pricing, and Promotion.

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

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

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

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

20 71. DEFENDANTS failed to compensate the CLASS for drive time, which is compensable  
21 under California Law. DEFENDANTS failed to compensate Territory Managers for drive time from  
22 their homes to their first stores, and also from their last stores to their homes. Territory Managers  
23 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  
24 first store, which may take more than one hour, and any drive time from the last store after 5:00 p.m.,  
25 which may take more than one hour, is not compensated.

26 72. PLAINTIFFS’ workday would typically start at 6:30 a.m., as each Territory Sales Manager  
27 is required to check text messages, e-mails, and voicemails that were sent overnight or that may have  
28 come in after the end of the previous day’s work, including new work assignments and any

1 instructions to visit retail stores to perform various tasks such as pricing change, or change of  
2 merchandizing display. PLAINTIFFS are required to complete reporting tasks that were required of  
3 them by DEFENDANTS such as preparing performance plans, preparing presentations, and other  
4 tasks as required by DEFENDANTS. PLAINTIFFS are also required to “replicate” the iPad twice  
5 per day, once prior to attending the first store, and once again at the conclusion of the workday in the  
6 field. Replicating the iPad computer to upload and download files to DEFENDANTS’ main server  
7 would take, each time, between fifteen (15) minutes to forty-five (45) minutes depending on the size  
8 of the files, the number of errors, and/or other issues occurring during replication. PLAINTIFF and  
9 the CLASS were not compensated for any of this time. PLAINTIFF and the CLASS were also  
10 required to complete numerous training after their workday in the field.

11 73. Additionally, PLAINTIFFS had to plan their daily route, including mapping ahead of  
12 time. There is an assumption made by DEFENDANTS as to how long it would take each Territory  
13 Sales Manager to commute to a given work location, how much time it would take at each retail  
14 store to perform each of the job functions assigned by DEFENDANTS. Furthermore,  
15 PLAINTIFFS were expected to communicate with management in order to keep them apprised as  
16 to how their day was progressing as well as to learn the constantly changing corporate protocols and  
17 procedures.

18 74. DEFENDANTS held PLAINTIFF and the CLASS to a strict work schedule;  
19 underestimating the time it would take to travel from home to the first store location and from the  
20 last store location to home; inspect retail store compliance with DEFENDANTS’ contractual terms;  
21 discuss violations with the owner and/or manager, after waiting for prolonged periods of time for an  
22 available manager and/or store owner; writeup a report documenting any incompliance issues; call  
23 the next store manager prior to scheduling a visit at the store; and the appropriate time would take to  
24 travel from one store to the other.

25 75. If any of the PLAINTIFFS was to request overtime, he/she would stand to be reprimanded  
26 for doing so and his/her request would be denied, and he/she would face discipline for failing to  
27 follow company policies. Confronted with the dilemma of requesting overtime by submitting a  
28 timecard that reflects actual overtime hours, only to be reprimanded and denied anyway, PLAINTIFF

1 and the CLASS would work uncompensated for at least 10 hours per week as was favored and  
2 required by DEFENDANTS.

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

9 77. Even though PLAINTIFFS were misclassified as “exempt,” Territory Sales Managers  
10 were not permitted to submit their timecards for any hours worked in excess of eight (8) hours per  
11 day and forty (40) hours per week. Specifically, DEFENDANTS compelled PLAINTIFFS to work  
12 “off the clock” and only approved them to submit their timecards consisting of not more than forty  
13 (40) hours per week, and not more than eight (8) hours per day, which they submitted on bi-weekly  
14 basis regardless of the number of hours worked. In fact, the electronic time-cards Territory Sales  
15 Managers are/were compelled to submit on a bi-weekly basis are prepopulated and Territory Sales  
16 Managers are only able to make changes in limited circumstances (e.g., vacation entries or days in  
17 which Territory Sales Managers did not work).

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

25 79. PLAINTIFF and the CLASS would not receive any pay and were not allowed to submit  
26 hours reflecting actual hours on their bi-weekly timecards. Upon information and belief, any  
27 deviation from the expressed expectation would result in DEFENDANTS’ denial of PLAINTIFFS’  
28 timecards.

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

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

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

16 83. As a direct result of DEFENDANTS’ work demands, policies, and procedures, and  
17 directives, PLAINTIFF and the CLASS did not have the ability to regularly take a daily meal break,  
18 much less a daily one-half hour uninterrupted meal period as is required by California law.  
19 PLAINTIFF and the CLASS also did not take any rest breaks throughout the workday.

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

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

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

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

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

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

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

16 91. Specifically, DEFENDANTS engage in a policy and practice of compelling and coercing  
17 PLAINTIFF and the CLASS to use their own personal vehicles and would only provide them with  
18 partial reimbursement, which did not cover the entire cost. PLAINTIFF and the CLASS have no  
19 choice but to accept DEFENDANTS' unconscionable terms and pay out-of-pocket for the reasonable  
20 and necessary costs of the use of their personal vehicles used for DEFENDANTS' business.  
21 DEFENDANTS failed to maintain any milage-logs to permit the employees to document the miles  
22 they drove for work to be fairly compensated for the costs of doing DEFENDANTS' business.

23 92. The CLASS suffered financial hardships because of DEFENDANTS' failure to provide  
24 employees with company credit cards for necessary and reasonable business expenses. The CLASS  
25 had to use their own personal debt and/or credit cards to pay for DEFENDANTS' necessary business  
26 expenses, which often added debt, interest, and ended up negatively impacting credit scores for  
27 employees since DEFENDANTS' would only approve expenses once a month. DEFENDANTS'  
28

1 unlawful policies and practices caused PLAINTIFF and the CLASS unnecessary and unfair financial  
2 burden.

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

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

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

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

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

22 97. DEFENDANTS have pursued policies and practices on a continuing basis that have  
23 denied and restricted job opportunities to qualified African American applicants and employees.  
24 PLAINTIFF was specifically harmed by these unlawful practices. Because of the DEFENDANTS'  
25 discriminatory policies PLAINTIFF was denied promotion, despite his qualification, to several  
26 positions to which he applied and was interviewed. LAND misled PLAINTIFF into believing that  
27 he would be offered a promotion based on his qualification without regard to his race/color. LAND  
28 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



1 company. PLAINTIFF, relying on LAND's misrepresentation, e-mailed LAND about multiple  
2 promotions that he was well qualified for. Unfortunately, PLAINTIFF would receive no response  
3 from LAND.

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

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

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

26 101. During his 2021 Second Half Performance Evaluation, his direct manager BEHAL  
27 complemented his knowledge: "Michael is very knowledgeable of tobacco business. He can have  
28 very productive conversations with retailers. I am looking forward to Michael taking a team leader

1 role, getting better at communicating within our team.” “Michael performed above and over  
2 delivered on the 2nd half goal.”

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

13 103. Because of PLAINTIFF’s repeated complaints that he was being discriminated against,  
14 PLAINTIFF was offered sham interviews to several positions to which he applied. However,  
15 PLAINTIFF was passed on for every opportunity that he applied for, and every single position was  
16 given to someone of a non-African American race. Clearly, that was not a coincidence. PLAINTIFF  
17 applied to numerous jobs, all of which were offered to non-African American applicants/employees.

18 Among the jobs PLAINTIFF applied are:

- 19 1. Division Manager OC/San Diego, CA;
- 20 2. Division Manager Los Angeles, CA;
- 21 3. Division Manager Texas/Louisiana;
- 22 6. Distribution Manager – Atlanta, GA
- 23 7. Distribution Manager – St. Louis, MO;
- 24 8. Distribution Manager – Chicago, IL;
- 25 9. Category Manager – West Region;
- 26 10. Sales Enablement Associate;
- 27 11. Performance Manager; and
- 28 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.

1 PLAINTIFF expressed his views to management, which led to his pretextual write up and  
2 termination.

3 105. PLAINTIFF was not only discriminated against in promotion, but also in the terms and  
4 conditions of his employment. PLAINTIFF would be written-up and reprimanded if he ever asked  
5 for a day off. But that same standard did not apply to non-African Americans. For instance, on June  
6 9, 2022, PLAINTIFF called off work. The division manager BEHAL had done the very same thing  
7 wherein he called off work on June 9-10, 2022. However, BEHAL, a non-African American, was  
8 not subjected to the same discriminatory treatment that PLAINTIFF was subjected to.

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

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

18 108. In fact, some Division Manager roles were being "gifted" to employees without even  
19 allowing employees of color to apply and interview for them. For instance, in December 2020, all  
20 employees had an All-Hands call, which is a companywide call. During this call, there was an  
21 announcement that certain people had received promotions. Frustrated from the discriminatory  
22 policies, PLAINTIFF called LAND immediately following the All-Hands call complaining of the  
23 same. LAND admitted that those promotions weren't even listed on the internal website for  
24 application and that they were handed to those that were chosen. Not only PLAINTIFF was offered  
25 sham interviews to silence him from complaining about discrimination, PLAINTIFF was not offered  
26 a fair opportunity to apply to certain other jobs. PLAINTIFF was not silenced, and he expressed his  
27 views that it wasn't fair that certain employees of non-African American race wouldn't even have to  
28

1 go through the interview process. Promotions were just “gifted” to them on the basis of their  
2 appearance, as opposed to their qualifications for the job, despite the fact that other African American  
3 employees, like PLAINTIFF, were more than deserving of the opportunity to move into one of those  
4 roles.

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

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

### 13 **CLASS ACTION DESIGNATION**

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

### 18 **THE CLASS**

19 112. All current and former employees, who were employed by DEFENDANTS in the  
20 State of California for a period of time within the four (4) years preceding the filing of this action  
21 until the time of trial, “THE RELEVANT TIME PERIOD,” in the position of Territory Sales  
22 Managers, or similar positions, who were subjected to DEFENDANTS’ unlawful acts as stated  
23 herein.

24 113. PLAINTIFF reserves the right under Rule 3.765, California Rules of Court, to  
25 amend or modify the CLASS description with greater specificity or further division into  
26 subclasses or limitations to particular issues.  
27  
28

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

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

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

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

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

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

- d. Whether DEFENDANTS deprived PLAINTIFF and the CLASS of meal periods or required PLAINTIFF and the CLASS to work during meal periods without compensation;
- e. Whether DEFENDANTS deprived PLAINTIFF and the CLASS of rest periods or required PLAINTIFF and the CLASS to work during rest periods without compensation;
- f. Whether DEFENDANTS failed to reimburse PLAINTIFF and the CLASS for necessary business expenses incurred in the performance of their job duties, in violation of Labor Code §2802;
- g. Whether DEFENDANTS' requirement that the PLAINTIFF and the CLASS agree to accept and pay for their own vehicle constitutes illegal terms and conditions of employment in violation of Labor Code § 432.5;
- h. Whether DEFENDANTS failed to timely pay all wages due to PLAINTIFF and the CLASS during their employment;
- i. Whether DEFENDANTS failed to issue accurately itemized wage statements to PLAINTIFF and the CLASS, in violation of Labor Code §§ 226(a);
- j. Whether DEFENDANTS kept complete and accurate payroll records as required by California Labor Code, including, *inter alia*, section 1174(d);
- k. Whether DEFENDANTS paid PLAINTIFFS their final wages beyond the time frames set forth in Labor Code §§ 201-203;
- l. Whether DEFENDANTS' conduct was willful or reckless;
- m. Whether DEFENDANTS failed to properly record all hours worked;
- 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

1 incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that  
2 have been, are and will be necessarily expended for the prosecution of this action for the substantial  
3 benefit of each CLASS member.

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

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

15 123. Class action treatment will allow those similarly situated persons to litigate their claims in  
16 the manner that is most efficient and economical for the parties and the judicial system. PLAINTIFF  
17 is unaware of any difficulties that are likely to be encountered in the management of this action that  
18 would preclude its maintenance as a class action. Individualized litigation would also present the  
19 potential for inconsistent or contradictory judgments, in addition of duplication of efforts and  
20 expenses.

21 **FIRST CAUSE OF ACTION**  
22 **FAILURE TO PAY FOR ALL HOURS WORKED INCLUDING OVERTIME**  
23 **COMPENSATION**  
24 **(In Violation of CAL. LAB. CODE §§ 510, 1194, 1198; IWC WAGE ORDER**  
25 **NO.7.)**  
26 **(Against All DEFENDANTS)**

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

125. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS are and were  
misclassified as "exempt" employees of DEFENDANTS and did not receive compensation for all

1 hours worked and did not receive overtime pay for work performed in excess of 40 hours per week  
2 regardless of the number of hours actually worked.

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

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

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

15 129. The IWC Wage Order provides that DEFENDANTS are and were required to  
16 p a y PLAINTIFF and the CLASS employed by DEFENDANTS, and working more than eight  
17 (8) hours in a day or more than forty (40) hours in a workweek, at a rate of time-and-one half  
18 for all hours worked in excess of eight (8) hours in a day or more than forty hours (40) in a  
19 workweek.

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

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

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

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



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

6  
7 133. California Labor Code §1198, in pertinent part, provides:

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

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

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

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

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

26 138. PLAINTIFF is also entitled to recover reasonable attorneys’ fees and costs, pursuant  
27 to California Labor Code §1194(a).

28 139. During the RELEVANT TIME PERIOD, defendants JLI, and LAND were and are the  
PLAINTIFF’S and the CLASS employers and/or persons acting on behalf of the DEFENDANTS,  
within the meaning of California Labor Code § 558, who violated or caused to be violated any section

1 of the wage order regulating the days and hours worked and, as such are individually liable to each  
2 member of the CLASS for each such violations as set forth in the California Labor Code.

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

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

13 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PROVIDE MEAL PERIODS**  
16 **(In Violation of IWC Wage Order 7-2001, CAL. LAB. CODE §§ 226.7, 512)**  
17 **(Against All DEFENDANTS)**

18 142. 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:

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

23 144. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS are and were  
24 misclassified as "exempt" employees of DEFENDANTS and did not receive meal periods or  
25 premium pay in lieu of meal periods.

26 145. By misclassifying PLAINTIFF and the CLASS as "exempt," DEFENDANTS deprived  
27 PLAINTIFF and the CLASS proper protections and benefits of the laws governing meal periods.  
28

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

3 147. California Labor Code §226.7 provides:

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

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

9 Moreover, California Labor Code §512 provides:

10 An employer may not employ an employee for a work period of more than five hours per day  
11 without providing the employee with a meal period of not less than 30 minutes, except that if  
12 the total work period per day of the employee is no more than six hours, the meal period may  
13 be waived by mutual consent of both the employer and employee. An employer may not  
14 employ and employee for a work period of more than 10 hours per day without providing the  
employee with a second meal period no not less than 30 minutes, except that if the total hours  
15 worked is no more than 12 hours, the second meal period maybe waived by mutual consent  
16 of the employer and the employee only if the first meal period was not waived.

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

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

20 “No employer shall employ any person for a work period of more than of not less than 30  
21 minutes... Unless the employee is relieved of all duty during a 30-minute meal period, the  
22 meal period shall be considered an “on duty” meal period and counted as time worked. If an  
23 employer fails to provide an employee a meal period in accordance with the applicable  
24 provisions of this order the employer shall provide the employee one (1) hour of pay at the  
25 employee ‘s regular rate of compensation for each workday that the meal period is not  
26 provided.

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

1 151. During the RELEVANT TIME PERIOD, DEFENDANTS intentionally and willfully  
2 required PLAINTIFF and the CLASS to work during meal periods and failed to compensate  
3 PLAINTIFF and the CLASS for the full meal period premium for work performed during meal  
4 Periods.

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

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

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

14 155. Pursuant to applicable IWC Wage Order and California Labor Code section  
15 226.7(b), PLAINTIFF and the CLASS are entitled to recover from DEFENDANTS one additional  
16 hour of pay at the employee's regular rate of compensation for each workday the meal or rest  
17 period is not provided. In determining the regular rate of pay for each CLASS member, all  
18 remuneration paid to each, including but not limited to *performance bonuses*, must be calculated.

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

25 157. Labor Code § 558 imposes upon DEFENDANTS, for each initial violation, a  
26 penalty of \$50.00 for each underpaid employee for each pay period for which the employee was  
27 underpaid in addition to an amount sufficient to recover the underpaid wages, which shall be paid to  
28 each affected employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS, for each

subsequent violation, a penalty of \$100.00 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, which shall be paid to each affected employee.

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

WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

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

159. 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:

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

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

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

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

164. California Labor Code. §226.7 states

"no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission." Section 12 of Wage Order No.

7-2001 provides in relevant part that:

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

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

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

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

14 168. During the RELEVANT TIME PERIOD, DEFENDANTS failed to pay PLAINTIFF and  
15 the CLASS the full rest period premium due pursuant to California Labor Code section 226.7.  
16 Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b).

17 169. PLAINTIFF and the CLASS are entitled to recover from DEFENDANTS one  
18 additional hour of pay at the employees' regular rate of compensation for each workday that the  
19 rest period was not provided. In determining the regular rate of pay for each CLASS member, all  
20 remuneration paid to each, including but not limited to performance bonuses, must be calculated.

21 170. In committing the violations of state law as herein alleged, DEFENDANTS refused  
22 to perform their obligations to authorize and permit rest periods and have also failed to pay rest  
23 premium wages. As a direct result, PLAINTIFF and the CLASS have suffered, and continue  
24 to suffer, substantial losses, including those related to the use and enjoyment of such compensation,  
25 wages, and lost interest on such monies in seeking to compel DEFENDANTS to fully perform  
26 their obligation under state law, all to their respective damage in amounts according to proof at trial  
27 and within the jurisdictional limitations of this Court.  
28

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

172. Labor Code § 558 imposes upon DEFENDANTS for each initial violation a penalty of \$50.00 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, which shall be paid to each affected employee. Furthermore, Labor Code§ 558 imposes upon DEFENDANTS for each subsequent violation a penalty of \$100 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, which shall be paid to each affected employee.

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

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

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.

182. 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 CLASS drove and the associated costs.

183. None of the PLAINTIFFS 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.



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

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

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

187. PLAINTIFF and the CLASS 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 PLAINTIFFS to agree to illegal terms and conditions of employment and DEFENDANTS' unlawful failure to fully reimbursement PLAINTIFF and the CLASS for the vehicle and their personal cellphone use.

188. In failing to reimburse PLAINTIFF and the CLASS 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 CLASS by reaping economic gain at PLAINTIFF and the CLASS' expenses, in willful and conscious disregard of PLAINTIFFS' statutory and regulatory rights.

189. 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.

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

WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

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

191. 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:

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

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

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

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

196. DEFENDANTS failed to timely pay PLAINTIFF and the CLASS who are former 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.

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

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

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

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

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

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

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

WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

**SIXTH CAUSE OF ACTION**  
**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**  
**(In Violation CODE §§ 226(a), 1174(d)**  
**(Against All DEFENDANTS)**

204. 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:

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

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

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

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

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

25 210. Furthermore, Labor Code § 226(g) permits an employee to bring an action for injunctive  
26 relief to ensure compliance with Labor Code § 226. Thus, PLAINTIFF and the CLASS additionally  
27 seek injunctive relief to ensure compliance with Labor Code § 226 including, but not limited to, the  
28 providing and maintenance of accurate itemized wage statements identifying, among other things,

1 all the hours worked and their corresponding rate for each pay period and the total net wages earned  
2 during each pay period.

3 211. PLAINTIFF seeks all available remedies for DEFENDANTS' violations including, but not  
4 limited to, any and all wages due, actual damages, penalties, payments pursuant to Labor Code  
5 § 226(e), monies, interest, attorney's fees, costs and injunctive relief.

6 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

7 **SEVENTH CAUSE OF ACTION**  
8 **FAILURE TO PAY EARNED WAGES VIOLATION OF LABOR CODE § 200**  
9 **(Against All DEFENDANTS)**

10 212. 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:

12 213. DEFENDANTS wrongfully failed to pay the PLAINTIFF and former members of the  
13 CLASS who were employees of DEFENDANTS' their earned wages, which PLAINTIFF and former  
14 members of the CLASS were entitled to receive based on DEFENDANTS' Yearly Bonus ("YB").  
15 In particular, DEFENDANTS engage in a policy and practice of failing to pay former employees  
16 their pro rata share of the YB at the time of their termination. PLAINTIFF'S YB was 30% of his  
17 Base Salary. The YB is dependent on achievement of his goals which were established 30 days after  
18 the start of his employment and after the start of each fiscal year. The YB is eligible for payment  
19 twice a year. The goals include a mix of Company goals (which include, goals related to sales,  
20 EBITDA, installed base of users, consumer engagement, new product launches, and personal  
21 objectives and key results ("Personal OKRs").

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

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

29 215. The amount of earned but unpaid YB that the PLAINTIFF and the former members of the  
30 CLASS are entitled to receive constitute "wages" within the meaning of § 200 of the California Labor  
31 Code because PLAINTIFF and the former members of the CLASS performed labor and were

1 promised additional compensation as an incentive for the performance of such services to the benefit  
2 of the DEFENDANTS. DEFENDANTS unjustly reaped the benefits of the services and labor  
3 performed by PLAINTIFF and members of the CLASS who were former employees of the  
4 DEFENDANTS but failed to pay them for their labor.

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

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

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

18 219. PLAINTIFF completed all of the terms of the bonus agreement, and he was entitled to  
19 recover at least a pro-rata share of the promised bonus. See DLSE Opn. Letter No. 1987.06.03 (June  
20 3, 1987). It has long been the rule that termination (whether voluntary or involuntary) does not  
21 necessarily impede an employee's right to receive a commission/bonus where no other action is  
22 required on the part of the employee to complete the sale leading to the commission payment.  
23 (See *Willison v. Turner Resilient Floors* (1949) 89 Cal. App. 2d 589 [201 P.2d 406].) This concept  
24 has been colorfully described as “He who shakes the tree is the one to gather the fruit.” (*E. A. Strout*  
25 *Western Realty Agency, Inc. v. Lewis* (1967) 255 Cal. App. 2d 254, 259 [62 Cal. Rptr. 918],  
26 quoting *Sessions v. Pacific Improvement Co.* (1922) 57 Cal.App. 1, 18 [206 P. 653]; See also DLSE,  
27 Enforcement Policies and Interpretations Manual.) Lab. Code, § 219, prohibits an employer and  
28 employee from agreeing, even voluntarily, to circumvent provisions of Lab. Code, §§ 200-243.

1 220. PLAINTIFFS and members of the CLASS have been injured by DEFENDANTS'  
2 intentional conversion of such wages and compensation. PLAINTIFF and the CLASS are entitled  
3 to immediate possession of all amounts converted by DEFENDANTS, with interest, as well as any  
4 and all profits that DEFENDANTS acquired by their unlawful conversion.

5 221. DEFENDANTS' action were oppressive, malicious, and fraudulent, and were concealed  
6 by DEFENDANTS, and each of them, from the PLAINTIFF and the CLASS as hereinbefore alleged.

7 222. PLAINTIFF and the CLASS have been injured by DEFENDANTS' oppressive, malicious,  
8 intentional, and fraudulent actions, entitling PLAINTIFF and the CLASS to punitive and exemplary  
9 damages.

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

13 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

14 **EIGHTH CAUSE OF ACTION**  
15 **VIOLATION OF BUSINESS & PROFESSIONS CODE §17200**  
16 **(Against All DEFENDANTS)**

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

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

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

26 227. DEFENDANTS' Labor Code and IWC Wage Orders violations include, but are not limited  
27 to, DEFENDANTS' (i) failure to provide proper meal and rest periods and pay PLAINTIFF and the  
28 CLASS meal and rest premiums for missed, short, late and/or on-duty meal and rest periods; (ii)  
failure to pay all overtime wages for all hours worked and under the control of DEFENDANTS; (iii)

1 failure to maintain accurate records including accurate records of DEFENDANTS' employees' hours  
2 worked and wages earned; (iv) failure to provide accurate wage statements; (v) failure to reimburse  
3 employees for all costs and expenses incurred and; (vi) failure to timely pay all wages due to their  
4 employees during employment and after separation of employment including YB.

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

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

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

18 231. DEFENDANTS' scheme to lower their payroll costs by violating the California Labor  
19 Code and Wage Order of the Industrial Welfare Commission, as alleged herein, constitutes  
20 "unlawful, unfair or fraudulent business act or practice," under Business and Professions Code §  
21 17200 et seq. By engaging in the above-described acts and practices, DEFENDANTS have committed  
22 one or more acts of unfair competition within the meaning of Business & Profession Code  
23 §17200, et seq. DEFENDANTS, and each of them, have acted contrary to public policies and have  
24 engaged in other unlawful and unfair business practices in violation of Business & Profession Code  
25 §17200, et seq., depriving PLAINTIFF and the CLASS and all interested persons of rights, benefits,  
26 and privileges guaranteed to all employees under law

27 232. DEFENDANTS' conduct as herein alleged has damaged PLAINTIFF and the CLASS  
28 as described in this Complaint. The aforementioned acts of DEFENDANTS' individually, or by



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

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

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

16 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

17 **NINTH CAUSE OF ACTION**  
18 **RACE/ COLOR DISCRIMINATION IN VIOLATION OF FEHA**  
19 **(CALIFORNIAN GOVERNMENT CODE § 12940, et seq.)**  
20 **(ALLEGED BY THE PLAINTIFF INDIVIDUALLY AGAINST ALL**  
21 **DEFENDANTS)**

22 235. 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:

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

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

28 238. 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

1 by FEHA because they regularly employed five or more persons. Furthermore, due to  
2 DEFENDANTS' day-to-day managerial role, their right to hire, fire, discipline the employees, and  
3 their control over the terms and conditions of PLAINTIFF'S employment, DEFENDANTS are  
4 PLAINTIFF's FEHA employer, or alternatively a joint employer, which provides employment  
5 pursuant to contract. *See Vernon v. State* (2004) 116 Cal.App.4<sup>th</sup> 114, 124.

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

11 240. 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.

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

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

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

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

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

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

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

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

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

16           249. The PLAINTIFF is informed and believes, and thereupon alleges, that his race/color as  
17 an African American, was a motivating factor in DEFENDANTS' aforementioned decisions that were  
18 adverse to PLAINTIFF in regards to compensation and terms, conditions and privileges of  
19 employment. The PLAINTIFF's race/color, African American, was a motivating factor in  
20 DEFENDANTS' aforementioned decision to actually terminate and fail to promote the PLAINTIFF.  
21 DEFENDANTS refuse to hire African American applicants as there were only two (2) African  
22 Americans in the entire division. DEFENDANTS also refused to employ PLAINTIFF in a work  
23 environment free of discrimination by refusing to promote PLAINTIFF and refusing to acknowledge  
24 his achievements leading to promotions and recognition.

25           250. As a direct, legal, and proximate cause of PLAINTIFF's aforementioned protected  
26 status, described hereinabove, DEFENDANTS discriminated against the PLAINTIFF including,  
27 but not limited to, the promoting employees, who did not have PLAINTIFF's protected status, to  
28

1 assume the duties and responsibilities that PLAINTIFF had sought; the employees that  
2 DEFENDANTS promoted and/or assigned to assume the duties and responsibilities that  
3 PLAINTIFF had and/or sought were not as qualified as PLAINTIFF to assume those duties  
4 and responsibilities; DEFENDANTS made discriminatory statements based on PLAINTIFF's  
5 aforementioned protected status, as described hereinabove; DEFENDANTS gave no reason for the  
6 aforementioned adverse actions, described herein above, and/or gave a vague, false, and/or illegal  
7 reason for the adverse actions, DEFENDANTS did not follow their own internal rules and  
8 procedures in taking adverse action against the PLAINTIFF; DEFENDANTS treated PLAINTIFF  
9 and other African American employees differently than employees not in the same protected  
10 status; DEFENDANTS have a pattern and practice of discriminating against employees in the  
11 aforementioned protected status of PLAINTIFF, described hereinabove; and/or DEFENDANTS  
12 implemented policies and procedures that had an adverse impact on PLAINTIFF and/or other African  
13 Americans with the same protected status as PLAINTIFF, as described hereinabove.

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

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

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

26 254. The conduct which PLAINTIFF complains of in this complaint, and which is alleged  
27 above, was carried out by the DEFENDANTS willfully, intentionally, and with oppression, malice and  
28

1 fraud and was carried out with conscious disregard of PLAINTIFF's rights and as such PLAINTIFF  
2 is entitled to an award of exemplary damages according to proof. The aforementioned conducted on  
3 which punitive damages is alleged, as described hereinabove, was done with the advance knowledge  
4 by an officer, director and/or managing agent of DEFENDANTS, of the unfitness of the employee  
5 and the employee was employed with a conscious disregard of the rights and/or safety or others. The  
6 aforementioned conducted on which punitive damages is alleged, as described hereinabove, was  
7 authorized, ratified and/or committed by an officer, director, and/or managing agent of  
8 DEFENDANTS.

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

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

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

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

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

23 259. FEHA defines "employer" broadly to encompass "any person regularly employing five  
24 or more persons, or any person acting as an agent of an employer, directly or indirectly". California  
25 Government Code § 12926(d). Here, JLI was PLAINTIFF's employer as defined by FEHA because  
26 it regularly employed five or more persons. Furthermore, due to its day-to-day managerial role, right  
27 to hire, fire, discipline the employees, and control over the terms and conditions of PLAINTIFF'S  
28 employment, JLI is PLAINTIFF's FEHA employer. See *Vernon v. State* (2004) 116 Cal.App.4<sup>th</sup>  
114, 124.

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

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

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

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

16 **TWELFTH CAUSE OF ACTION**  
17 **RETALIATION IN VIOLATION OF FEHA**  
18 **(ALLEGED BY THE PLAINTIFF INDIVIDUALLY AGAINST ALL**  
19 **DEFENDANTS)**

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

22 265. Under the FEHA, Government Code section 12940*et. seq.*, it is an unlawful employment  
23 practice for an employer to discharge, expel, or otherwise discriminate against any person because  
24 the person has opposed any practices forbidden under the Fair Employment and Housing Act or  
25 because the person has filed a complaint, testified or assisted in any proceedings under the FEHA.

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

1        267. PLAINTIFF opposed race/color discrimination by DEFENDANTS, complained that  
2 DEFENDANTS committed race/color discrimination, protested race/color discrimination. When  
3 PLAINTIFF engaged in the aforementioned activity, PLAINTIFF was engaged in protected activity  
4 under the FEHA.

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

7        269. DEFENDANTS made decisions adverse to the PLAINTIFF in regards to compensation  
8 and terms, conditions and privileges of employment. DEFENDANTS actually terminated the  
9 PLAINTIFF, refused to continue to employ PLAINTIFF, refused to promote PLAINTIFF, and failed  
10 to reinstate the PLAINTIFF and assure him that DEFENDANTS can provide a work environment  
11 free of discrimination.

12        270. The PLAINTIFF's aforementioned protected activity, as described hereinabove, was a  
13 motivating factor in DEFENDANTS' decisions that was adverse to PLAINTIFF in regards to  
14 compensation and terms, conditions and privileges of employment. The PLAINTIFF's  
15 aforementioned protected activity, as described hereinabove, was a motivating factor in  
16 DEFENDANTS' decision to actually terminate the PLAINTIFF; refuse to continue to employ  
17 PLAINTIFF, refuse to promote PLAINTIFF, and fail to reinstate the PLAINTIFF and assure him  
18 that DEFENDANTS can provide a work environment free of discrimination and harassment.

19        271. As a direct, legal, and proximate cause of PLAINTIFF's aforementioned protected status,  
20 described hereinabove, DEFENDANTS retaliated against PLAINTIFF including, but not limited to,  
21 the following ways: DEFENDANTS hired and/or assigned employees, who did not have  
22 PLAINTIFF's protected status, to assume the duties and responsibilities that PLAINTIFF had and/or  
23 sought; the employees that DEFENDANTS hired and/or assigned to assume the duties and  
24 responsibilities that PLAINTIFF had and/or sought were not as qualified as PLAINTIFF to assume  
25 those duties and responsibilities; DEFENDANTS gave a pretextual reason for the aforementioned  
26 adverse actions, described herein above, which is false; DEFENDANTS did not follow their own  
27 internal rules and procedures in taking adverse action against the PLAINTIFF; DEFENDANTS  
28 treated PLAINTIFF differently than employees not in the same protected status; DEFENDANTS

1 have a pattern and practice of discriminating against employees in the aforementioned protected  
2 status of PLAINTIFF, described hereinabove; and/or DEFENDANTS implemented policies and  
3 procedures that had an adverse impact on PLAINTIFF and other employees with the same protected  
4 status as PLAINTIFF, as described hereinabove.

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

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

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

16 275. The conduct which PLAINTIFF complains of in this complaint, and which is  
17 alleged above, was carried out by the DEFENDANTS willfully, intentionally, and with oppression,  
18 malice and fraud and was carried out with conscious disregard of PLAINTIFF's rights as and as such  
19 PLAINTIFF is entitled to an award of exemplary damages according to proof. The aforementioned  
20 conducted on which punitive damages is alleged, as described hereinabove, was done with the  
21 advance knowledge by an officer, director and/or managing agent of DEFENDANTS, of the  
22 unfitness of the employee and the employee was employed with a conscious disregard of the rights  
23 and/or safety or others. The aforementioned conducted on which punitive damages is alleged, as  
24 described hereinabove, was authorized, ratified and/or committed by an officer, director, and/or  
25 managing agent of DEFENDANTS.

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



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

277. 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:

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

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

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

- a. California Fair Employment and Housing Act, California Government Code Section 12940(a), which prohibits discrimination and/or harassment against an employee based on disability;
- b. California Government Code Section 12940(i), which prohibits ratification of unlawful conduct by an employer;
- c. California Government Code Section 12940(j), under which an employer is strictly liable for a supervisor’s harassment of a subordinate, and for the unlawful acts of non-supervisory employees and/or third persons whom the employer knows or should have known have committed discriminatory or harassing acts against an employee;
- d. California Government Code Section 12940(k), which requires an employer to take all reasonable steps to prevent harassment and discrimination from occurring in the workplace;

1 e. California Labor Code Section 1102.5, which prohibits an employer from retaliating  
2 against an employee for reporting unlawful activity.

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

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

10 283. The aforementioned acts of DEFENDANTS' individually, or by and through their  
11 managing agents, officers, and/o directors were willful, wanton, malicious, intentional, oppressive,  
12 and despicable, and were done in willful and conscious disregard of the rights of PLAINTIFF, and  
13 each of them, and were done by managerial agents and employees of DEFENDANTS, or with the  
14 express knowledge, consent, and ratification of managerial employees of DEFENDANTS, with the  
15 intent to vex, injure, and annoy PLAINTIFF, such as to constitute oppression, fraud, or malice  
16 pursuant to California Civil Code § 3294, entitling PLAINTIFF to punitive and exemplary damages  
17 in a sum which is an amount appropriate to punish and set an example of DEFENDANTS, and each  
18 of them, to deter such conduct in the future, and to set an example for others.

19 **FOURTEENTH CAUSE OF ACTION**  
20 **WHISTLEBLOWER VIOLATION OF CAL. LAB. CODE § 1102.5**  
21 **(ALLEGED BY THE PLAINTIFF INDIVIDUALLY AGAINST ALL**  
22 **DEFENDANTS)**

23 284. 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:

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

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

28 “An employer, or any person acting on behalf of the employer, shall not make, adopt, or  
enforce any rule, regulation, or policy preventing an employee from disclosing information to  
a government or law enforcement agency, to a person with authority over the employee, or to  
another employee who has authority to investigate, discover, or correct the violation or  
noncompliance, or from providing information to, or testifying before, any public body  
conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to

1 believe that the information discloses a violation of state or federal statute, or a violation of  
2 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.

3 (b)An employer, or any person acting on behalf of the employer, shall not retaliate against  
4 an employee for disclosing information, or because the employer believes that the employee  
5 disclosed or may disclose information, to a government or law enforcement agency, to a  
6 person with authority over the employee or another employee who has the authority to  
7 investigate, discover, or correct the violation or noncompliance, or for providing information  
8 to, or testifying before, any public body conducting an investigation, hearing, 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.

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

12 287. DEFENDANTS retaliated against PLAINTIFF for blowing the whistle, complaining  
13 about, opposing and protesting against DEFENDANTS' unlawful activities, including but not limited  
14 to complaining about DEFENDANTS' discriminatory policies and practices, and DEFENDANTS'  
15 implementation of the Retail Access Control Standards Program<sup>2</sup> ("RACS").

16 288. The U.S. Food and Drug Administration ("FDA") had "issued a warning letter to JUUL  
17 Labs Inc. for marketing unauthorized modified risk tobacco products by engaging in labeling,  
18 advertising, and/or other activities directed to consumers, including a presentation given to youth at  
19 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)  
20 [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  
21 concern regarding JUUL's outreach and marketing practices, including those targeted at students,  
22 tribes, health insurers and employers.

23 289. To fight FDA claims that JLI has led the teen vaping epidemic, JLI entered into  
24 an agreement with the FDA representing that RACS would be installed on all POS age-verification  
25

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26  
27 <sup>2</sup> "RACS is an example of one way to comply with Enhanced Access Controls for the sale of JUUL  
28 products. RACS automatically requires electronic ID scanning to verify the purchaser's age and ID  
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 system that will require all JLI retailers to comply. PLAINTIFF blew the whistle that RACS was  
2 ineffective/impractical and does not promote the FDA's goal of protecting the youth.

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

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

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

14 293. DEFENDANTS violated Cal. Labor Code § 1102.5(b) as they retaliated against  
15 PLAINTIFF for protesting DEFENDANTS' unlawful actions to a person with authority over the  
16 employee, or to another employee who has authority to investigate, discovery or correct the violation  
17 or noncompliance, because DEFENDANTS deemed PLAINTIFF was complaining/or intended to  
18 complaint to the appropriate agency regarding DEFENDANTS' unlawful conduct including but not  
19 limited to race/color and JLI's RACS as alleged herein.

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

24 295. When PLAINTIFF was subjected to the adverse employment actions as identified in this  
25 Complaint, DEFENDANTS' were substantially motivated by PLAINTIFF's complaints of violations  
26 of state and/or federal law (or PLAINTIFF reasonably believed to be in violation), and said  
27 complaints were substantial motivating factors and/or reasons in the decision to subject PLAINTIFF  
28

1 to the aforesaid retaliatory adverse employment actions, in violation of California Labor Code §  
2 1102.5.

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

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

14 298. The aforementioned acts of DEFENDANTS' individually, or by and through their  
15 managing agents, officers, and/or directors were willful, wanton, malicious, intentional, oppressive,  
16 and despicable, and were done in willful and conscious disregard of the rights of PLAINTIFF, and  
17 each of them, and were done by managerial agents and employees of DEFENDANTS, or with the  
18 express knowledge, consent, and ratification of managerial employees of DEFENDANTS, with the  
19 intent to vex, injure, and annoy PLAINTIFF, such as to constitute oppression, fraud, or malice  
20 pursuant to California Civil Code § 3294, entitling PLAINTIFF to punitive and exemplary damages  
21 in a sum which is an amount appropriate to punish and set an example of DEFENDANTS, and each  
22 of them, to deter such conduct in the future, and to set an example for others.

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

25 300. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF is entitled to  
26 reasonable attorneys' fees and costs of said suit as specifically provided in Cal. C.C.P. § 1021.5.  
27 PLAINTIFF's action enforces important rights affecting the public interest by bringing forth this  
28 lawsuit to ensure DEFENDANTS refrain from unlawfully retaliating against employees for

1 blowing the whistle, thereby conferring a significant benefit on the general public and well being as a  
2 result. The necessity and financial burden of this private enforcement, as well as the interest  
3 of justice, entitles PLAINTIFF to reasonable attorneys' fees and costs under Cal. C.C.P. § 1021.5.

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

6 **FIFTEENTH CAUSE OF ACTION**  
7 **PENALTIES, PURSUANT TO LABOR CODE § 2699 FOR VIOLATIONS OF LABOR**  
8 **CODE §§ 2802, 2804, 432.5, 510, 1198, 558, 226.7, 512, 201. 202, 203, 1174, 226, 226.3**  
9 **(AGAINST ALL DEFENDANTS)**

10 302. 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

12 303. :Cal. Labor Code § 2698 et seq., the Labor Code Private Attorney General Act of 2004  
13 expressly establishes that any provision of the Cal. Labor Code which provides for a civil penalty to  
14 be assessed and collected by the Labor and Workforce Development Agency, or any of its  
15 departments, divisions, commissions, boards agencies or employees for a violation of the Cal. Labor  
16 Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself  
17 or herself, and collectively on behalf of all other current or former employees.

18 304. Whenever the Labor and Workforce Development Agency, or any of its departments,  
19 divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court  
20 in a civil action is authorized to exercise the same discretion, subject to the same limitation and  
21 conditions, to assess a civil penalty.

22 305. PLAINTIFF, and the CLASS of Territory Managers are “aggrieved employees” as defined  
23 by Cal. Labor Code § 2699 in that they are all current and former employees of DEFENDANTS, and  
24 one or more of the alleged violations was committed against them.

25 306. Having complied with the Notice and administrative provisions of PAGA, PLAINTIFF  
26 holds a right to bring an action on behalf of her and other employees acting as a proxy of the LWDA.

27 307. Pursuant to Labor Code § 2699 et seq., PLAINTIFF seeks to recover civil penalties for  
28 which DEFENDANTS are liable as a result of violations of the Labor Code, as set forth in this  
Complaint and the Labor Code Private Attorney General Notice attached hereto as Exhibit “2” and

incorporated by reference including, but not limited to, violations of labor code §§ Labor Code §§ 2802, 2804, 432.5, 510, 1198, 558, 226.7, 512, 201. 202, 203, 1174, 226, 226.3.

308. As a result of the violations alleged herein, PLAINTIFF, individually and on behalf of all aggrieved employees in their capacity as private attorneys general seeks penalties under Labor Code § 2699(f), which states in relevant part:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions as follows: ... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation.

309. To the extent that any violation alleged herein does not carry penalties under Cal. Labor Code § 2699(a), PLAINTIFF seeks civil penalties pursuant to Cal. Lab. Code § 2699(f) for PLAINTIFF and each member of the CLASS for each pay period in which they were aggrieved, in the amounts established by Cal. Lab. Code § 2699(f).

310. For each such violations, PLAINTIFF and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial. The penalties will be allocated 75% to LWDA, and 25% to the CLASS, (i.e. affected employees.)

311. Pursuant to Cal. Labor Code §§2699(g)(1) PLAINTIFFS are entitled to seek and recover reasonable attorneys' fees and costs.

312. PLAINTIFF, on behalf of herself and the CLASS, requests relief through PAGA as described herein and below.

#### **DEMAND FOR JURY TRIAL**

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

#### **PRAYER FOR RELIEF**

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

1. For an Order certifying the proposed CLASS and/or any other appropriate subclasses 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. 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;
28. For an accounting to determine all money wrongfully obtained and held by DEFENDANTS;

1 29. For penalties according to the schedule as laid out in PAGA: for any initial violation,  
2 one hundred (\$100) dollars for each aggrieved employee per pay period; two hundred  
3 (\$200) dollars for each aggrieved employee per pay period for any subsequent violation,  
4 and reasonable attorneys' fees and costs pursuant to California Labor Code § 2699;  
5 30. For all other Orders, findings, and determinations identified and sought in this  
6 Complaint and/or the Court finds just and proper;  
7 31. PLAINTIFF reserves the right to amend his prayer for relief.

8  
9 Dated: September 19, 2023

MIRZAYAN LAW, APLC

10  
11 By:



12 Natalie Mirzayan, Esq.  
13 Attorney for PLAINTIFF MICHAEL STEWART II  
14 and the CLASS  
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## **EXHIBIT 1**

# MIRZAYAN LAW, APLC

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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 Manager<sup>1</sup> 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.

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<sup>1</sup> 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 5<sup>th</sup> 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.

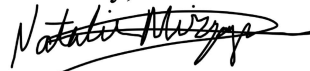
Employees completed all of the terms of the bonus agreement, and were entitled to recover at least a pro-rata share of the promised bonus. See DLSE Opn. Letter No. 1987.06.03 (June 3,



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 long, sweeping horizontal line extending from the end of the signature.

Natalie Mirzayan, Esq.

Attorney for Plaintiff

Michael Stewart II and Aggrieved Employees

**Mirzayanlaw@outlook.com**

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**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

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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](mailto: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%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ikl1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=5K0vfyP%2BNi9tEXB0IQuWZrIzAbT1tNgpraKMfK9QVU8%3D&reserved=0](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%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ikl1haWwiLCJXVCI6Mn0%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

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**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.



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

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

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

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

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

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

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

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

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

41 PLAINTIFF was misled to believe that DEFENDANTS, and specifically LAND, would not  
42 discriminate against him. But for discriminating against PLAINTIFF, PLAINTIFF would have  
43 been promoted. LAND would always praise PLAINTIFF and his qualification. Assure the  
44 PLAINTIFF that he was valuable, talented, and his knowledge and expertise would certainly  
45 get him promoted. Specifically, LAND assured the PLAINTIFF during their bi-weekly one-to-  
46 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 positions 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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