

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

SIMPSON GARDEN GROVE, INC. (dba Simpson Chevrolet of Garden Grove); and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

NORMA REYES on behalf of herself, other Aggrieved Employes, and the State of California,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Orange Superior Court
700 Civic Center Drive, West
Santa Ana, CA 92701

CASE NUMBER:

30-2020-01175614-CU-OE-CJC

Judge Sheila Fell

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 892-7095 Fax: (858) 404-9203
Zakay Law Group, APLC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE: 12/22/2020 DAVID H. YAMASAKI, Clerk of the Court
(Fecha)

Clerk, by —
(Secretario)

Dome

— Dominique Carr —

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):



ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)255-9047
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Jean-Claude Lapuyade (State Bar #248676)
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Telephone: (619)599-8292
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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE**

NORMA REYES on behalf of herself, other
Aggrieved Employees, and the State of
California,

Plaintiff,

v.

SIMPSON GARDEN GROVE, INC. (dba
Simpson Chevrolet of Garden Grove); and
DOES 1-50, Inclusive,

Defendants.

Case No: 30-2020-01175614-CU-OE-CJC

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 *et seq.*]

Assigned for All Purposes

Judge Sheila Fell

Plaintiff NORMA REYES, an individual, (“PLAINTIFF”), on behalf of the people of the State of California and as “aggrieved employees” acting as a private attorney general under the Labor Code Private Attorney General Action of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information and belief, except for her own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

1. PLAINTIFF brings this action against SIMPSON GARDEN GROVE, INC. (dba Simpson Chevrolet of Garden Grove) (“DEFENDANT” or “DEFENDANTS”) seeking only to recover PAGA civil penalties for herself, and on behalf of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does not seek to recover anything other

1 than penalties as permitted by California Labor Code § 2699. To the extent that statutory
2 violations are mentioned for wage violations, PLAINTIFF does not seek underlying general
3 and/or special damages for those violations in this action, but simply the civil penalties
4 permitted by California Labor Code § 2699. Notwithstanding, PLAINTIFF is not abandoning
5 her right to pursue her individual claims for, inter alia, Defendant's alleged wage violations,
6 and/or general or special damages arising from those violations, and she fully intends to, at a
7 future date, pursue claims for those individual claims and damages.

8 2. California has enacted the PAGA to permit an individual to bring an action on
9 behalf of herself and on behalf of others for PAGA penalties only, which is the precise and sole
10 nature of this action.

11 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
12 DEFENDANTS' violations under PAGA and solely for the relief as permitted by PAGA – that
13 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
14 complaint should be construed as attempting to obtain any relief that would not be available in a
15 PAGA-only action.

16 4. Defendant SIMPSON GARDEN GROVE, INC. (dba Simpson Chevrolet of
17 Garden Grove) ("DEFENDANT" or "Defendant") is a Delaware Corporation and at all relevant
18 times mentioned herein conducted and continues to conduct substantial and regular business
19 throughout California.

20 5. DEFENDANT, owns and operates four car dealerships in the city of Garden
21 Grove, in Orange County.

22 6. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
23 employee entitled to minimum wages, overtime pay and meal and rest periods from April 2018
24 to March of 2020. PLAINTIFF was at all times relevant mentioned herein classified by
25 DEFENDANT as a non-exempt employee paid on an hourly basis.

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

1 "AGGRIEVED EMPLOYEES") during the PAGA PERIOD, brings this representative action
2 pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S violation of
3 California Labor Code §§ 201, 202, 203, 204, 210, 285, 218.6, 226, 226.3, 226.7, 510, 512,
4 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199 and the applicable Wage Order. Based
5 upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees
6 within the meaning of Labor Code § 2699, *et seq.*

7 8. The true names and capacities, whether individual, corporate, subsidiary,
8 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
9 unknown to PLAINTIFF who therefore sue these Defendants by such fictitious names pursuant
10 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
11 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
12 PLAINTIFFS are informed and believes, and based upon that information and belief allege, that
13 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
14 responsible in some manner for one or more of the events and happenings that proximately
15 caused the injuries and damages hereinafter alleged

16 9. The agents, servants and/or employees of the Defendants and each of them acting
17 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
18 agent, servant and/or employee of the Defendants, and personally participated in the conduct
19 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
20 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
21 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
22 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
23 Defendants' agents, servants and/or employees.

24 **THE CONDUCT**

25 10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
26 was required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
27 meaning the time during which an employee is subject to the control of an employer, including
28 all the time the employee is suffered or permitted to work. From time to time, DEFENDANT

1 required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the
2 time they were under DEFENDANT'S control. Specifically, DEFENDANT required
3 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S off-duty
4 meal break. PLAINTIFF was often interrupted by work assignments during her breaks. Indeed
5 there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the
6 PLAINTIFF and other AGGRIEVED EMPLOYEES, from time to time, forfeited minimum
7 wage and overtime compensation by working without their time being accurately recorded and
8 without compensation at the applicable minimum wage and overtime rates. DEFENDANT'S
9 uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for
10 all time worked is evidenced by DEFENDANT'S business records.

11 11. As a result of their rigorous work schedules, PLAINTIFF and other
12 AGGRIEVED EMPLOYEES were also from time to time unable to take off duty meal breaks
13 and were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
14 EMPLOYEES were required to perform work as ordered by DEFENDANT for more than five
15 (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed
16 to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
17 each workday in which these employees were required by DEFENDANT to work ten (10) hours
18 of work. PLAINTIFF and the other AGGRIEVED EMPLOYEES therefore forfeited meal
19 breaks without additional compensation and in accordance with DEFENDANT's strict
20 corporate policy and practice

21 12. During the PAGA PERIOD, from time to time, PLAINTIFF and other
22 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without
23 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
24 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a
25 first and second rest period of at least ten (10) minutes for some shifts worked of between six
26 (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
27 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
28 rest breaks, PLAINTIFF and the AGGRIEVED EMPLOYEES were required to remain on the

1 premises and subject to DEFENDANT's control. If they were to leave DEFENDANT's
2 premises, PLAINTIFF and the AGGRIEVED EMPLOYEES were required to clock out.
3 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
4 wages in lieu thereof. As a result of their rigorous work schedules, and in compliance with
5 DEFENDANT's policy, PLAINTIFF and other AGGRIEVED EMPLOYEES were periodically
6 denied their proper rest periods by DEFENDANT and DEFENDANT'S managers.

7 13. From time to time, when PLAINTIFF and other CALIFORNIA CLASS
8 Members missed meal and rest breaks, or when they worked during what was supposed to be
9 their meal breaks, DEFENDANT also failed to provide PLAINTIFF and the other
10 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
11 show, among other things, the correct time and overtime worked, including, work performed in
12 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct
13 penalty payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every
14 employer shall furnish each of his or her employees with an accurate itemized wage statement in
15 writing showing, among other things, gross wages earned and all applicable hourly rates in
16 effect during the pay period and the corresponding amount of time worked at each hourly rate.
17 Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to
18 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
19 Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the
20 other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

21 14. The proper recording of these employees' missed meal and rest breaks is the
22 DEFENDANT'S burden. As a result of DEFENDANT'S intentional disregard of the obligation
23 to meet this burden, DEFENDANT failed to properly calculate and/or pay all required
24 compensation for work performed by the AGGRIEVED EMPLOYEES and violated the
25 California Labor Code and regulations promulgated thereunder as herein alleged.

26 15. In addition, because of DEFENDANT's commission pay plan with respect to
27 some the AGGRIEVED EMPLOYEES, DEFENDANT failed to separately compensate
28 AGGRIEVED EMPLOYEES for their rest periods as required by the applicable Wage Order

1 and Labor Code. DEFENDANT did not have a policy or practice which paid for off-duty rest
2 periods to PLAINTIFF and the other AGGRIEVED EMPLOYEES. As a result,
3 DEFENDANT's failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with all
4 the legally required paid rest periods is evidenced by DEFENDANT's business records.

5 16. Specifically as to PLAINTIFF, she was from time to time unable to take off duty
6 meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
7 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
8 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
9 provide PLAINTIFF with a second off-duty meal period each workday in which she was
10 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal
11 and rest breaks without additional compensation and in accordance with DEFENDANT'S strict
12 corporate policy and practice. DEFENDANT also provided PLAINTIFF with paystubs that
13 failed to accurately display payments for missed meal and rest periods for certain pay periods in
14 violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF all
15 wages still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203. The
16 amount in controversy for PLAINTIFF individually does not exceed the sum or value of
17 \$75,000.

18 **JURISDICTION AND VENUE**

19 17. This Court has jurisdiction over this Action pursuant to California Code of Civil
20 Procedure, Section 410.10.

21 18. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant times
23 maintained offices and facilities in this County and/or conducts substantial business in this
24 County, and (ii) committed the wrongful conduct herein alleged in this County against members
25 of the AGGRIEVED EMPLOYEES and CALIFORNIA LABOR SUB-CLASS.

26 //

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28 //

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

3 **(Cal. Lab. Code §§ 2698 et seq.)**

4 **(Alleged by PLAINTIFF against all Defendants)**

5 19. PLAINTIFFS reallege and incorporates by this reference, as though fully set
6 forth herein, the prior paragraphs of this Complaint.

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

17 21. PLAINTIFF, and such persons that may be added from time to time who satisfy
18 the requirements and exhaust the administrative procedures under the Private Attorney General
19 Act, bring this Representative Action on behalf of the State of California with respect to
20 themselves and all individuals who are or previously were employed by DEFENDANT and
21 classified as non-exempt employees in California during the time period of April 6, 2019 until
22 the present (the "AGGRIEVED EMPLOYEES").

23 22. On August 18, 2020, PLAINTIFF gave written notice by certified mail to the
24 Labor and Workforce Development Agency (the "Agency") and the employer of the
25 specific provisions of this code alleged to have been violated as required by Labor Code §
26 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The
27 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
28 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil

1 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
2 to all AGGRIEVED EMPLOYEES as herein defined.

3 23. On September 17, 2020, PLAINTIFF gave an amended written notice by
4 certified mail to the Labor and Workforce Development Agency (the "Agency") and the
5 employer of the specific provisions of this code alleged to have been violated as required by
6 Labor Code § 2699.3. See Exhibit #2, attached hereto and incorporated by this reference
7 herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint
8 has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
9 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
10 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

11 24. The policies, acts and practices heretofore described were and are an unlawful
12 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF
13 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including
14 minimum wage and overtime wages in violation of the Wage Order, (b) failed to provide meal
15 and rest breaks, (c) failed to provide accurate itemized wage statements, and (d) failed to timely
16 pay wages, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5,
17 including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3,
18 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and the applicable
19 Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such
20 conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code
21 Private Attorney General Act of 2004 as the representative of the State of California for the
22 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

23 25. Some or all of the conduct and violations alleged herein occurred during the
24 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
25 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
26 that affected other AGGRIEVED EMPLOYEES. (Carrington v. Starbucks Corp. (2018) 30
27 Cal.App.5th 504, 519; See also Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal.
28 App. 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one

1 Labor Code violation committed by an employer—to pursue penalties for all the Labor Code
2 violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFFS pray for a judgment against each Defendants, jointly and
6 severally, as follows:

7 1. On behalf of the State of California and with respect to all AGGRIEVED
8 EMPLOYEES:

- 9 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
10 General Act of 2004
11 a. An award of interest, including prejudgment interest at the legal rate;
12 b. Such other and further relief as the Court deems just and equitable; and
13 c. An award of penalties, attorneys’ fees and costs of suit, as allowable under the
14 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194
15 and/or §1197.

16 DATED: December 21, 2020

17 **ZAKAY LAW GROUP, APLC**

18
19 
20 By: _____

21 Shani O. Zakay
22 Attorney for Plaintiffs
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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

August 18, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

SIMPSON GARDEN GROVE, INC.
(dba Simpson Chevrolet of Garden Grove)
c/o CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice of Violations of California Labor Code Sections §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents Norma Reyes (“Plaintiff”) and other aggrieved employees in an action against Simpson Garden Grove, Inc (dba Simpson Chevrolet of Garden Grove), (“Defendant”). This office intends to file the enclosed Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendant in California from April 2018 to March 2020. Plaintiff was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, with minimum and overtime wages for all time worked, and, overtime compensation at one-and-one-half times the regular rate of pay. Said conduct, in addition to the foregoing, violates Labor Code § 1198 and the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3.

As a consequence, Plaintiff contends that Defendant failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and applicable wage orders, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3 and is therefore actionable pursuant to section 2698 *et seq.*

A copy of the Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees and Class Members

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney at Law

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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

NORMA REYES on behalf of herself and on
behalf of all persons similarly situated,

Plaintiff,

v.

SIMPSON GARDEN GROVE, INC. (dba
Simpson Chevrolet of Garden Grove); and
DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and

DEMAND FOR A JURY TRIAL

1 Plaintiff NORMA REYES, an individual, ("PLAINTIFF"), on behalf of herself and all
2 other similarly situated current and former employees, allege on information and belief,
3 except for their own acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant SIMPSON GARDEN GROVE, INC. (dba Simpson Chevrolet of
6 Garden Grove) ("DEFENDANT" or "Defendant") is a Delaware Corporation and at all relevant
7 times mentioned herein conducted and continues to conduct substantial and regular business
8 throughout California.

9 2. DEFENDANT, owns and operates four car dealerships in the city of Garden
10 Grove, in Orange County.

11 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
12 employee entitled to minimum wages, overtime pay and meal and rest periods from April 2018
13 to March of 2020. PLAINTIFF was at all times relevant mentioned herein classified by
14 DEFENDANT as a non-exempt employee paid on an hourly basis.

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

22 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT'S uniform policy and practice
25 which failed to lawfully compensate these employees for all their time worked.
26 DEFENDANT'S uniform policy and practice alleged herein is an unlawful, unfair and
27 deceptive business practice whereby DEFENDANTS retained and continue to retain wages due
28 to PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other
members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by

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

4 6. The true names and capacities, whether individual, corporate, subsidiary,
5 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
6 unknown to PLAINTIFF who therefore sue these Defendants by such fictitious names pursuant
7 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
8 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
9 PLAINTIFFS are informed and believes, and based upon that information and belief allege, that
10 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
11 responsible in some manner for one or more of the events and happenings that proximately
12 caused the injuries and damages hereinafter alleged

13 7. The agents, servants and/or employees of the Defendants and each of them acting
14 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
15 agent, servant and/or employee of the Defendants, and personally participated in the conduct
16 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
17 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
18 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
19 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
20 Defendants' agents, servants and/or employees.

21 **THE CONDUCT**

22 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
23 was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
24 worked, meaning the time during which an employee is subject to the control of an employer,
25 including all the time the employee is suffered or permitted to work. From time to time,
26 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without
27 paying them for all the time they were under DEFENDANT'S control. Specifically,
28 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be

1 PLAINTIFF'S off-duty meal break. PLAINTIFF was often interrupted by work assignments
2 during her breaks. Indeed there were many days where PLAINTIFF did not even receive a
3 partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members, from
4 time to time, forfeited minimum wage and overtime compensation by working without their
5 time being accurately recorded and without compensation at the applicable minimum wage and
6 overtime rates. DEFENDANT'S uniform policy and practice not to pay PLAINTIFF and other
7 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT'S business
8 records.

9 9. As a result of their rigorous work schedules, PLAINTIFF and other
10 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
11 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
12 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT
13 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
14 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
15 second off-duty meal period each workday in which these employees were required by
16 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other CALIFORNIA
17 CLASS Members therefore forfeited meal breaks without additional compensation and in
18 accordance with DEFENDANT's strict corporate policy and practice

19 10. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
20 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
21 without being provided ten (10) minute rest periods. Further, these employees were denied their
22 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
23 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
24 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
25 minutes for some shifts worked of ten (10) hours or more. When they did have an opportunity to
26 take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
27 remain on the premises and subject to DEFENDANT's control. If they were to leave
28 DEFENDANT's premises, PLAINTIFF and the CALIFORNIA CLASS Members were required

1 to clock out. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided
2 with one hour wages in lieu thereof. As a result of their rigorous work schedules, and in
3 compliance with DEFENDANT's policy, PLAINTIFF and other CALIFORNIA CLASS
4 Members were periodically denied their proper rest periods by DEFENDANT and
5 DEFENDANT'S managers.

6 11. From time to time, when PLAINTIFF and other CALIFORNIA CLASS
7 Members missed meal and rest breaks, or when they worked during what was supposed to be
8 their meal breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of
9 the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
10 among other things, the correct time and overtime worked, including, work performed in excess
11 of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty
12 payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer
13 shall furnish each of his or her employees with an accurate itemized wage statement in writing
14 showing, among other things, gross wages earned and all applicable hourly rates in effect during
15 the pay period and the corresponding amount of time worked at each hourly rate. Aside from the
16 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
17 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
18 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of
19 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

20 12. By reason of this uniform conduct applicable to PLAINTIFF and all
21 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
22 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et*
23 *seq.*(the "UCL"), by engaging in a company-wide policy and procedure which failed to
24 accurately calculate and record all missed meal and rest periods by PLAINTIFF and other
25 CALIFORNIA CLASS Members. The proper recording of these employees' missed meal and
26 rest breaks is the DEFENDANT'S burden. As a result of DEFENDANT'S intentional disregard
27 of the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
28

1 required compensation for work performed by the members of the CALIFORNIA CLASS and
2 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

3 13. Specifically as to PLAINTIFF, she was from time to time unable to take off duty
4 meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
5 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
6 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
7 provide PLAINTIFF with a second off-duty meal period each workday in which she was
8 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal
9 and rest breaks without additional compensation and in accordance with DEFENDANT'S strict
10 corporate policy and practice. DEFENDANT also provided PLAINTIFF with paystubs that
11 failed to accurately display payments for missed meal and rest periods for certain pay periods in
12 violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF all
13 wages still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203. The
14 amount in controversy for PLAINTIFF individually does not exceed the sum or value of
15 \$75,000.

16 **JURISDICTION AND VENUE**

17 14. This Court has jurisdiction over this Action pursuant to California Code of Civil
18 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
19 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees
20 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

21 15. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395 and 395.5, because DEFENDANT (i) currently maintain and at all relevant times
23 maintained offices and facilities in this County and/or conducts substantial business in this
24 County, and (ii) committed the wrongful conduct herein alleged in this County against members
25 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

26 **THE CALIFORNIA CLASS**

27 16. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
28 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class

1 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
2 individuals who are or previously were employed by DEFENDANT in California and classified
3 as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
4 beginning four (4) years prior to the filing of the original complaint and ending on the date as
5 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in controversy
6 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
7 (\$5,000,000.00).

8 17. To the extent equitable tolling operates to toll claims by the CALIFORNIA
9 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
10 accordingly.

11 18. DEFENDANT, as a matter of company policy, practice and procedure, and in
12 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
13 requirements, and the applicable provisions of California law, intentionally, knowingly, and
14 willfully, engaged in a practice whereby DEFENDANT systematically failed to provide
15 compliant meal and rest breaks missed by PLAINTIFF and the other members of the
16 CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required
17 employees to perform this work and permitted or suffered to permit this work.

18 19. DEFENDANT has the legal burden to establish that each and every
19 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
20 required by California laws. DEFENDANT, however, as a matter of uniform and systematic
21 policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and
22 still fails to have in place a policy or practice to ensure that each and every CALIFORNIA
23 CLASS Member is paid as required by law, so as to satisfy their burden. This common business
24 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
25 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions
26 Code §§ 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this
27 claim.

1 20. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA
2 CLASS Members is impracticable.

3 21. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
4 California law by:

- 5 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
6 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
7 company policies, practices and procedures that failed to pay all wages due the
8 CALIFORNIA CLASS for all time worked;
- 9 b. Committing an act of unfair competition in violation of the California Unfair
10 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
11 provide mandatory meal and/or rest breaks to PLAINTIFFS and the
12 CALIFORNIA CLASS members;
- 13 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
14 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
15 company policies, practices and procedures that uniformly and systematically
16 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
17 CLASS for all time worked, including minimum wages owed and overtime
18 wages owed for work performed by these employees;

19 22. The Class Action meets the statutory prerequisites for the maintenance of a Class
20 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 21 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
22 joinder of all such persons is impracticable and the disposition of their claims as
23 a class will benefit the parties and the Court;
- 24 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
25 raised in this Complaint are common to the CALIFORNIA CLASS will apply
26 uniformly to every member of the CALIFORNIA CLASS;
- 27 c. The claims of the representative PLAINTIFF are typical of the claims of each
28 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members

1 of the CALIFORNIA CLASS, were classified as a non- exempt employee paid
2 on an hourly basis who was subjected to the DEFENDANT’S deceptive practice
3 and policy which failed to provide the legally required meal and rest periods to
4 the CALIFORNIA CLASS and thereby systematically underpaid compensation
5 to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic
6 injury as a result of DEFENDANT’S employment practices. PLAINTIFF and the
7 members of the CALIFORNIA CLASS were and are similarly or identically
8 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
9 misconduct engaged in by DEFENDANT; and

- 10 d. The representative PLAINTIFF will fairly and adequately represent and protect
11 the interest of the CALIFORNIA CLASS, and has retained counsel who are
12 competent and experienced in Class Action litigation. There are no material
13 conflicts between the claims of the representative PLAINTIFF and the members
14 of the CALIFORNIA CLASS that would make class certification inappropriate.
15 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
16 CALIFORNIA CLASS Members.

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

- 19 a. Without class certification and determination of declaratory, injunctive, statutory
20 and other legal questions within the class format, prosecution of separate actions
21 by individual members of the CALIFORNIA CLASS will create the risk of:
- 22 i. Inconsistent or varying adjudications with respect to individual members
23 of the CALIFORNIA CLASS which would establish incompatible
24 standards of conduct for the parties opposing the CALIFORNIA CLASS;
25 and/or;
 - 26 ii. Adjudication with respect to individual members of the CALIFORNIA
27 CLASS which would as a practical matter be dispositive of interests of
28

1 the other members not party to the adjudication or substantially impair or
2 impede their ability to protect their interests.

3 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
4 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
5 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
6 DEFENDANT uniformly failed to pay all wages due for all time worked by the
7 members of the CALIFORNIA CLASS as required by law;

8 i. With respect to the First Cause of Action, the final relief on behalf of the
9 CALIFORNIA CLASS sought does not relate exclusively to restitution
10 because through this claim PLAINTIFF seeks declaratory relief holding
11 that the DEFENDANT's policy and practices constitute unfair
12 competition, along with declaratory relief, injunctive relief, and incidental
13 equitable relief as may be necessary to prevent and remedy the conduct
14 declared to constitute unfair competition;

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

21 i. The interests of the members of the CALIFORNIA CLASS in
22 individually controlling the prosecution or defense of separate actions in
23 that the substantial expense of individual actions will be avoided to
24 recover the relatively small amount of economic losses sustained by the
25 individual CALIFORNIA CLASS Members when compared to the
26 substantial expense and burden of individual prosecution of this
27 litigation;

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

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

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

11 iii. In the context of wage litigation, because a substantial number of
12 individual CALIFORNIA CLASS Members will avoid asserting their
13 legal rights out of fear of retaliation by DEFENDANT, which may
14 adversely affect an individual's job with DEFENDANT or with a
15 subsequent employer, the Class Action is the only means to assert their
16 claims through a representative; and

17 iv. A class action is superior to other available methods for the fair and
18 efficient adjudication of this litigation because class treatment will
19 obviate the need for unduly and unnecessary duplicative litigation that is
20 likely to result in the absence of certification of this action pursuant to
21 Cal. Code of Civ. Proc. § 382.

22 24. The Court should permit this action to be maintained as a Class Action pursuant
23 to Cal. Code of Civ. Proc. § 382 because:

24 a. The questions of law and fact common to the CALIFORNIA CLASS
25 predominate over any question affecting only individual CALIFORNIA CLASS
26 Members because the DEFENDANT's employment practices are uniform and
27 systematically applied with respect to the CALIFORNIA CLASS.
28

- 1 b. A Class Action is superior to any other available method for the fair and efficient
2 adjudication of the claims of the members of the CALIFORNIA CLASS because
3 in the context of employment litigation a substantial number of individual
4 CALIFORNIA CLASS Members will avoid asserting their rights individually
5 out of fear of retaliation or adverse impact on their employment;
- 6 c. The members of the CALIFORNIA CLASS are so numerous that it is
7 impractical to bring all members of the CALIFORNIA CLASS before the Court;
- 8 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
9 obtain effective and economic legal redress unless the action is maintained as a
10 Class Action;
- 11 e. There is a community of interest in obtaining appropriate legal and equitable
12 relief for the acts of unfair competition, statutory violations and other
13 improprieties, and in obtaining adequate compensation for the damages and
14 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
15 CLASS;
- 16 f. There is a community of interest in ensuring that the combined assets of
17 DEFENDANT are sufficient to adequately compensate the members of the
18 CALIFORNIA CLASS for the injuries sustained;
- 19 g. DEFENDANT have acted or refused to act on grounds generally applicable to
20 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
21 with respect to the CALIFORNIA CLASS as a whole;
- 22 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
23 business records of DEFENDANT; and
- 24 i. Class treatment provides manageable judicial treatment calculated to bring an
25 efficient and rapid conclusion to all litigation of all wage and hour related claims
26 arising out of the conduct of DEFENDANT as to the members of the
27 CALIFORNIA CLASS.
28

1 25. DEFENDANT maintains records from which the Court can ascertain and
2 identify by job title each of DEFENDANT’S employees who as have been systematically,
3 intentionally and uniformly subjected to DEFENDANT’S company policy, practices and
4 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
5 any additional job titles of similarly situated employees when they have been identified.

6 **THE CALIFORNIA LABOR SUB-CLASS**

7 26. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh,
8 causes of Action on behalf of a California sub-class, defined as all members of the
9 CALIFORNIA CLASS classified as non-exempt employees (the “CALIFORNIA LABOR
10 SUB-CLASS”) at any time during the period three (3) years prior to the filing of the original
11 complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR
12 SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy
13 for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million
14 dollars (\$5,000,000.00).

15 27. DEFENDANT, as a matter of company policy, practice and procedure, and in
16 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
17 requirements, and the applicable provisions of California law, intentionally, knowingly, and
18 willfully, engaged in a practice whereby DEFENDANT failed to provide compliant meal and
19 rest breaks to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
20 and pay wages and premiums owed to these employees, even though DEFENDANT enjoyed the
21 benefit of this work, required employees to perform this work and permitted or suffered to
22 permit this work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
23 CLASS Members wages and premiums to which these employees are entitled in order to
24 unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to
25 toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
26 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

27 28. DEFENDANT maintains records from which the Court can ascertain and
28 identify by name and job title, each of DEFENDANT’S employees who have been

1 systematically, intentionally and uniformly subjected to DEFENDANT’S company policy,
2 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint
3 to include any additional job titles of similarly situated employees when they have been
4 identified.

5 29. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
6 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 9 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
10 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
11 missed meal and rest breaks in violation of the California Labor Code and
12 California regulations and the applicable California Wage Order;
- 13 b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
14 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
15 thirty (30) minute meal breaks and rest periods;
- 16 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
17 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
18 statements;
- 19 d. Whether DEFENDANT have engaged in unfair competition by the above-listed
20 conduct;
- 21 e. The proper measure of damages and penalties owed to the members of the
22 CALIFORNIA LABOR SUB-CLASS; and
- 23 f. Whether DEFENDANT’s conduct was willful.

24 31. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
25 under California law by:

- 26 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay
27 PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all
28

1 wages due for overtime worked, for which DEFENDANTS are liable pursuant to
2 Cal. Lab. Code § 1194;

3 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
4 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
5 the correct minimum wage pay for which DEFENDANTS are liable pursuant to
6 Cal. Lab. Code §§ 1194 and 1197;

7 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF
8 and the other members of the CALIFORNIA CLASS with all legally required
9 off-duty, uninterrupted thirty (30) minute meal breaks and the legally required
10 rest breaks;

11 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
12 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
13 statement in writing showing all accurate and applicable overtime rates in effect
14 during the pay period and the corresponding amount of time worked at each
15 overtime rate by the employee;

16 e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
17 employee is discharged or quits from employment, the employer must pay the
18 employee all wages due without abatement, by failing to tender full payment
19 and/or restitution of wages owed or in the manner required by California law to
20 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
21 their employment.

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

24 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
25 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
26 is impracticable and the disposition of their claims as a class will benefit the
27 parties and the Court;

- 1 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
2 raised in this Complaint are common to the CALIFORNIA LABOR SUB-
3 CLASS and will apply uniformly to every member of the CALIFORNIA
4 LABOR SUB-CLASS;
- 5 c. The claims of the representative PLAINTIFF are typical of the claims of each
6 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
7 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
8 employee paid on an hourly basis who was subjected to the DEFENDANT’S
9 practice and policy which failed to pay the correct amount of wages due to the
10 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
11 a result of DEFENDANT’s employment practices. PLAINTIFF and the members
12 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
13 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
14 misconduct engaged in by DEFENDANT; and
- 15 d. The representative PLAINTIFF will fairly and adequately represent and protect
16 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained
17 counsel who are competent and experienced in Class Action litigation. There are
18 no material conflicts between the claims of the representative PLAINTIFF and
19 the members of the CALIFORNIA LABOR SUB-CLASS that would make class
20 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
21 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
22 Members.

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

- 25 a. Without class certification and determination of declaratory, injunctive, statutory
26 and other legal questions within the class format, prosecution of separate actions
27 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
28 the risk of:

- 1 i. Inconsistent or varying adjudications with respect to individual members
2 of the CALIFORNIA LABOR SUB-CLASS which would establish
3 incompatible standards of conduct for the parties opposing the
4 CALIFORNIA LABOR SUB-CLASS; or
- 5 ii. Adjudication with respect to individual members of the CALIFORNIA
6 LABOR SUB-CLASS which would as a practical matter be dispositive of
7 interests of the other members not party to the adjudication or
8 substantially impair or impede their ability to protect their interests.
- 9 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
10 refused to act on grounds generally applicable to the CALIFORNIA LABOR
11 SUB-CLASS, making appropriate class-wide relief with respect to the
12 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANTS
13 uniformly failed to pay all wages due for all time worked by the members of the
14 CALIFORNIA LABOR SUB-CLASS as required by law;
- 15 c. Common questions of law and fact predominate as to the members of the
16 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
17 violations of California Law as listed above, and predominate over any question
18 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
19 Class Action is superior to other available methods for the fair and efficient
20 adjudication of the controversy, including consideration of:
- 21 i. The interests of the members of the CALIFORNIA LABOR SUB-
22 CLASS in individually controlling the prosecution or defense of separate
23 actions in that the substantial expense of individual actions will be
24 avoided to recover the relatively small amount of economic losses
25 sustained by the individual CALIFORNIA LABOR SUB-CLASS
26 Members when compared to the substantial expense and burden of
27 individual prosecution of this litigation;
28

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

3 1. Inconsistent or varying adjudications with respect to individual
4 members of the CALIFORNIA LABOR SUB-CLASS, which
5 would establish incompatible standards of conduct for the
6 DEFENDANTS; and/or,

7 2. Adjudications with respect to individual members of the
8 CALIFORNIA LABOR SUB-CLASS would as a practical matter
9 be dispositive of the interests of the other members not parties to
10 the adjudication or substantially impair or impede their ability to
11 protect their interests;

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

18 iv. A class action is superior to other available methods for the fair and
19 efficient adjudication of this litigation because class treatment will
20 obviate the need for unduly and unnecessary duplicative litigation that is
21 likely to result in the absence of certification of this action pursuant to
22 Cal. Code of Civ. Proc. § 382.

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

25 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
26 CLASS predominate over any question affecting only individual CALIFORNIA
27 LABOR SUB-CLASS Members;

- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and

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

5 **FIRST CAUSE OF ACTION**

6 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

12 36. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
13 Code § 17021.

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

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

22 38. By the conduct alleged herein, DEFENDANT has engaged and continues to
23 engage in a business practice which violates California law, including but not limited to, the
24 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
25 including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198,
26 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
27 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
28 unfair competition, including restitution of wages wrongfully withheld.

1 39. By the conduct alleged herein, DEFENDANT’S practices were unlawful and
2 unfair in that these practices violated public policy, were immoral, unethical, oppressive
3 unscrupulous or substantially injurious to employees, and were without valid justification or
4 utility for which this Court should issue equitable and injunctive relief pursuant to Section
5 17203 of the California Business & Professions Code, including restitution of wages wrongfully
6 withheld.

7 40. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
8 fraudulent in that DEFENDANT’S uniform policy and practice failed to pay PLAINTIFF, and
9 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
10 worked, failed to pay reporting time pay, and failed to reimburse for expenses due to a
11 systematic practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
12 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
13 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. &
14 Prof. Code § 17203, including restitution of wages wrongfully withheld.

15 41. By the conduct alleged herein, DEFENDANT’s practices were also unlawful,
16 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFF and the
17 other members of the CALIFORNIA CLASS to be underpaid during their employment with
18 DEFENDANT.

19 42. By the conduct alleged herein, DEFENDANT’s practices were also unfair and
20 deceptive in that DEFENDANT’s uniform policies, practices and procedures failed to provide
21 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

4 45. By and through the unlawful and unfair business practices described herein,
5 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
6 other members of the CALIFORNIA CLASS, including earned wages, and has deprived them
7 of valuable rights and benefits guaranteed by law and contract, all to the detriment of these
8 employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly
9 compete against competitors who comply with the law.

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

15 47. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
16 and do, seek such relief as may be necessary to restore to them the money and property which
17 DEFENDANT have acquired, or of which PLAINTIFF and the other members of the
18 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
19 unfair business practices, including earned but unpaid wages.

20 48. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
21 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
22 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
23 engaging in any unlawful and unfair business practices in the future.

24 49. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
25 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
26 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As
27 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
28 other members of the CALIFORNIA CLASS have suffered and will continue to suffer

1 irreparable legal and economic harm unless DEFENDANT are restrained from continuing to
2 engage in these unlawful and unfair business practices.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**
5 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

6 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
7 **Defendants)**

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

11 51. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
12 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
13 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
14 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
15 Members.

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

18 53. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
19 commission is the minimum wage to be paid to employees, and the payment of a wage less than
20 the minimum so fixed is unlawful.

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

23 55. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
24 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
25 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice
26 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
27 other members of the CALIFORNIA LABOR SUB-CLASS.

28 56. DEFENDANT'S uniform pattern of unlawful wage and hour practices
manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a

1 whole, as a result of implementing a uniform policy and practice that denies accurate
2 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
3 CLASS in regards to minimum wage pay.

4 57. In committing these violations of the California Labor Code, DEFENDANT
5 inaccurately calculated the correct time worked and consequently underpaid the actual time
6 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
7 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
8 benefits in violation of the California Labor Code, the Industrial Welfare Commission
9 requirements and other applicable laws and regulations.

10 58. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
11 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
12 receive the correct minimum wage compensation for their time worked for DEFENDANTS.

13 59. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
14 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
15 they were entitled to, constituting a failure to pay all earned wages.

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

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

62. In performing the acts and practices herein alleged in violation of California labor
laws, and refusing to compensate members of the CALIFORNIA LABOR SUB-CLASS for all

1 time worked and provide them with requisite compensation, DEFENDANT acted and continue
2 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
3 the CALIFORNIA LABOR SUB-CLASS with conscious and utter disregard for their legal
4 rights, or the consequences to them, and with the despicable intent of depriving them of their
5 property and legal rights, and otherwise causing them injury in order to increase company
6 profits at the expense of these employees.

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

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME COMPENSATION** 20 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

21 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
22 **Defendants)**

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

26 65. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
27 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
28 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime

1 worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40)
2 hours in any workweek.

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

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

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

13 69. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
14 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
15 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

22 71. In committing these violations of the California Labor Code, DEFENDANT acted
23 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
24 the California Labor Code, the Industrial Welfare Commission requirements and other
25 applicable laws and regulations.

26 72. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
27 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
28 receive full compensation for all overtime worked.

1 73. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
2 from the overtime requirements of the law. None of these exemptions are applicable to
3 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further
4 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject
5 to a valid collective bargaining agreement that would preclude the causes of action contained
6 herein this Complaint. Rather, PLAINTIFF bring this Action on behalf of themselves and the
7 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,
8 non-waivable rights provided by the State of California.

9 74. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
10 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
11 they were entitled to, constituting a failure to pay all earned wages.

12 75. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
13 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
14 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
15 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
16 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
17 to accurately record and pay using the applicable overtime rate as evidenced by
18 DEFENDANT's business records and witnessed by employees.

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

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

1 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
2 applicable overtime rate.

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

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

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

25 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
26 **Defendants)**

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

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

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

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

22
23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REQUIRED REST PERIODS**
25 **(Cal. Lab. Code §§ 226.7 & 512)**

26 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
27 **Defendants)**
28

1 84. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
2 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
3 paragraphs of this Complaint.

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

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

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

22
23 **SIXTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
25 **(Cal. Lab. Code § 226)**

26 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and**
27 **against all Defendants)**
28

1 88. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
2 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
3 paragraphs of this Complaint.

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

- 6 a. Gross wages earned;
- 7 b. Total hours worked by the employee, except for any employee whose
8 compensation is solely based on a salary and who is exempt from payment of
9 overtime under subdivision (a) of Section 515 or any applicable order of the
10 Industrial Welfare Commission;
- 11 c. The number of piece rate units earned and any applicable piece rate if the
12 employee is paid on a piece-rate basis;
- 13 d. All deductions, provided that all deductions made on written orders of the
14 employee may be aggregated and shown as one item;
- 15 e. Net wages earned;
- 16 f. The inclusive dates of the period for which the employee is paid;
- 17 g. The name of the employee and his or her social security number, except that by
18 January 1, 2008, only the last four digits of his or her social security number or
19 an employee identification number other than a social security number may be
20 shown on the itemized statement;
- 21 h. The name and address of the legal entity that is the employer; and
- 22 i. All applicable hourly rates in effect during the pay period and the corresponding
23 number of hours worked at each hourly rate by the employee.

24 90. When DEFENDANT did not accurately record PLAINTIFF’s and other
25 CALIFORNIA CLASS Members’ missed meal and rest breaks and wages owed, DEFENDANT
26 also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with
27 complete and accurate wage statements which failed to show, among other things, missed meal
28 and rest periods and reporting time wages owed to PLAINTIFF and other CALIFORNIA

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

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

20
21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES WHEN DUE**

23 **(Cal. Lab. Code §§201, 202, 203)**

24 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
25 **Defendants)**

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

1 93. Cal. Lab. Code § 200 provides that:

2 As used in this article:(a) "Wages" includes all amounts for labor performed by
3 employees of every description, whether the amount is fixed or ascertained by the
4 standard of time, task, piece, Commission basis, or other method of calculation.
5 (b) "Labor" includes labor, work, or service whether rendered or performed under
6 contract, subcontract, partnership, station plan, or other agreement if the labor to
7 be paid for is performed personally by the person demanding payment.

8 94. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
9 an employee, the wages earned and unpaid at the time of discharge are due and payable
10 immediately."

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

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

21 96. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
22 SUB-CLASS Members' employment contract.

23 97. Cal. Lab. Code § 203 provides:

24 If an employer willfully fails to pay, without abatement or reduction, in
25 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
26 who is discharged or who quits, the wages of the employee shall continue as a
27 penalty from the due date thereof at the same rate until paid or until an action
28 therefor is commenced; but the wages shall not continue for more than 30 days.

29 98. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
30 CLASS Members terminated and DEFENDANT has not tendered payment of wages, to these
31 employees who missed meal and rest breaks, as required by law.

32 99. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
33 members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF
34 demand up to thirty days of pay as penalty for not paying all wages due at time of termination
35 for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS

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

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFFS pray for a judgment against each Defendants, jointly and
5 severally, as follows:

6 1. On behalf of the CALIFORNIA CLASS:

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

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

- 18 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes
19 of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
20 pursuant to Cal. Code of Civ. Proc. § 382;
- 21 b. Compensatory damages, according to proof at trial, including compensatory
22 damages for minimum wages, reporting time wages, and other compensation due
23 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
24 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD
25 plus interest thereon at the statutory rate;
- 26 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
27 the applicable IWC Wage Order;
- 28 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in

1 which a violation occurs and one hundred dollars (\$100) per member of the
2 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
3 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
4 an award of costs for violation of Cal. Lab. Code § 226; and

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

8 3. On all claims:

- 9 a. An award of interest, including prejudgment interest at the legal rate;
10 b. Such other and further relief as the Court deems just and equitable; and
11 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the
12 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194
13 and/or §1197.

14
15 DATED: _____, 2020
16

17 **ZAKAY LAW GROUP, APLC**
18

19
20 By: _____
21 Shani O. Zakay
22 Attorney for Plaintiffs
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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for Plaintiff

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EXHIBIT 2



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

shani@zakaylaw.com

September 17, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

SIMPSON GARDEN GROVE, INC.
(dba Simpson Chevrolet of Garden Grove)
c/o Ron Hodges, Esq.
Goe Forsythe & Hodges, LLP
18101 Von Karman Avenue
Suite 1200
Irvine, CA 92612

SIMPSON AUTOMOTIVE, INC.
c/o CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice of Violations of California Labor Code Sections §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Case Number: LWDA-CM-802985-20

Dear Sir/ Madam:

This office represents Norma Reyes (“Plaintiff”) and other aggrieved employees in an action against Simpson Garden Grove, Inc (dba Simpson Chevrolet of Garden Grove), (“Defendant”). This office intends to file the enclosed Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendant in California from April 2018 to March 2020. Plaintiff was paid on an hourly basis and entitled to minimum wages, overtime wages, and legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods, with minimum and overtime wages for all time worked, and, overtime compensation at one-and-one-half times the regular rate of pay. Said conduct, in addition to the foregoing, violates Labor Code § 1198 and the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3.

Plaintiff’s original claim was submitted to LWDA on August 18, 2020 against Defendant. On September 14, 2020, Plaintiff learned for the first time of a corporate entity

who acted as Plaintiff's joint-employers in addition to Defendant: Simpson Automotive, Inc. Plaintiff therefore amends her August 18, 20120208 Notice to add Simpson Automotive, Inc. as an additional employer and defendant in this case. S Simpson Automotive, Inc. is being added as DOE 1 Defendant.

Furthermore, this amended notice is intended to clarify that Plaintiff is seeking to represent *all* aggrieved employees who worked for Defendants in California during the relevant claim period, including both non-exempt employees and employees subject to various exemptions.

As a consequence, Plaintiff contends that Defendant failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Plaintiff contends that Defendant's conduct violated Labor Code sections §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, and applicable wage orders, Violation of the Applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code § 2699.3 and is therefore actionable pursuant to section 2698 *et seq.*

A copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees and Class Members

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,



Shani O. Zakay
Attorney at Law

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
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Telephone: (619)599-8292
Facsimile: (619) 599-8291

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

NORMA REYES on behalf of herself and on
behalf of all persons similarly situated,

Plaintiff,

v.

SIMPSON GARDEN GROVE, INC. (dba
Simpson Chevrolet of Garden Grove);
SIMPSON AUTOMOTIVE, INC. a
Delaware Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and

DEMAND FOR A JURY TRIAL

1 Plaintiff NORMA REYES, an individual, ("PLAINTIFF"), on behalf of herself and all
2 other similarly situated current and former employees, allege on information and belief,
3 except for their own acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant SIMPSON GARDEN GROVE, INC. (dba Simpson Chevrolet of
6 Garden Grove) is a Delaware Corporation and at all relevant times mentioned herein conducted
7 and continues to conduct substantial and regular business throughout California. Defendant
8 SIMPSON AUTOMOTIVE, INC. is a Delaware Corporation and at all relevant times
9 mentioned herein conducted and continues to conduct substantial and regular business
10 throughout California. Defendant SIMPSON GARDEN GROVE, INC. and Defendant
11 SIMPSON AUTOMOTIVE, INC. are collectively referred to herein as "DEFENDANTS,"
12 "Defendants," "DEFENDANT" or "Defendant."

13 2. DEFENDANT, owns and operates four car dealerships in the city of Garden
14 Grove, in Orange County.

15 3. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
16 employee entitled to minimum wages, overtime pay and meal and rest periods from April 2018
17 to March of 2020. PLAINTIFF was at all times relevant mentioned herein classified by
18 DEFENDANT as a non-exempt employee paid on an hourly basis.

19 4. PLAINTIFF bring this Class Action on behalf of herself and a California class,
20 defined as all individuals who are or previously were employed by either or both
21 DEFENDANTS in California and classified as non-exempt employees (the "CALIFORNIA
22 CLASS") at any time during the period beginning four (4) years prior to the filing of the
23 Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS
24 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS
25 Members is under five million dollars (\$5,000,000.00).

26 5. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
27 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
28 the CALIFORNIA CLASS PERIOD caused by DEFENDANT'S uniform policy and practice
which failed to lawfully compensate these employees for all their time worked.

1 DEFENDANT’S uniform policy and practice alleged herein is an unlawful, unfair and
2 deceptive business practice whereby DEFENDANTS retained and continue to retain wages due
3 to PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other
4 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
5 DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the
6 CALIFORNIA CLASS who have been economically injured by DEFENDANT’S past and
7 current unlawful conduct, and all other appropriate legal and equitable relief.

8 6. **To the extent this action includes a cause of action for violations of the**
9 **Private Attorneys’ General Act (“PAGA”), PLAINTIFF brings this representative PAGA**
10 **action on behalf of herself, the State of California, and a group of Aggrieved Employees,**
11 **defined as all individuals who were employed by either or both DEFENDANTS in**
12 **California and classified as either non-exempt employees and/or as exempt employees at**
13 **any time during the period beginning April 6, 2019 and ending on the date as determined**
14 **by the Court.**

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

24 8. The agents, servants and/or employees of the Defendants and each of them acting
25 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
26 agent, servant and/or employee of the Defendants, and personally participated in the conduct
27 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
28 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all

1 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
3 Defendants' agents, servants and/or employees.

4 **THE CONDUCT**

5 9. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
6 was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time
7 worked, meaning the time during which an employee is subject to the control of an employer,
8 including all the time the employee is suffered or permitted to work. From time to time,
9 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without
10 paying them for all the time they were under DEFENDANT'S control. Specifically,
11 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
12 PLAINTIFF'S off-duty meal break. PLAINTIFF was often interrupted by work assignments
13 during her breaks. Indeed there were many days where PLAINTIFF did not even receive a
14 partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members, from
15 time to time, forfeited minimum wage and overtime compensation by working without their
16 time being accurately recorded and without compensation at the applicable minimum wage and
17 overtime rates. DEFENDANT'S uniform policy and practice not to pay PLAINTIFF and other
18 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT'S business
19 records.

20 10. As a result of their rigorous work schedules, PLAINTIFF and other
21 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
22 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
23 CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT
24 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
25 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
26 second off-duty meal period each workday in which these employees were required by
27 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other CALIFORNIA
28

1 CLASS Members therefore forfeited meal breaks without additional compensation and in
2 accordance with DEFENDANT's strict corporate policy and practice

3 11. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
4 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
5 without being provided ten (10) minute rest periods. Further, these employees were denied their
6 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
7 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
8 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10)
9 minutes for some shifts worked of ten (10) hours or more. When they did have an opportunity to
10 take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
11 remain on the premises and subject to DEFENDANT's control. If they were to leave
12 DEFENDANT's premises, PLAINTIFF and the CALIFORNIA CLASS Members were required
13 to clock out. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided
14 with one hour wages in lieu thereof. As a result of their rigorous work schedules, and in
15 compliance with DEFENDANT's policy, PLAINTIFF and other CALIFORNIA CLASS
16 Members were periodically denied their proper rest periods by DEFENDANT and
17 DEFENDANT'S managers.

18 12. From time to time, when PLAINTIFF and other CALIFORNIA CLASS
19 Members missed meal and rest breaks, or when they worked during what was supposed to be
20 their meal breaks, DEFENDANT also failed to provide PLAINTIFF and the other members of
21 the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,
22 among other things, the correct time and overtime worked, including, work performed in excess
23 of eight (8) hours in a workday and/or forty (40) hours in any workweek, and the correct penalty
24 payments or missed meal and rest periods. Cal. Lab. Code § 226 provides that every employer
25 shall furnish each of his or her employees with an accurate itemized wage statement in writing
26 showing, among other things, gross wages earned and all applicable hourly rates in effect during
27 the pay period and the corresponding amount of time worked at each hourly rate. Aside from the
28 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an

1 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
2 As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of
3 the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

4 13. By reason of this uniform conduct applicable to PLAINTIFF and all
5 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
6 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et*
7 *seq.*(the “UCL”), by engaging in a company-wide policy and procedure which failed to
8 accurately calculate and record all missed meal and rest periods by PLAINTIFF and other
9 CALIFORNIA CLASS Members. The proper recording of these employees’ missed meal and
10 rest breaks is the DEFENDANT’S burden. As a result of DEFENDANT’S intentional disregard
11 of the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
12 required compensation for work performed by the members of the CALIFORNIA CLASS and
13 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

14 14. Specifically as to PLAINTIFF, she was from time to time unable to take off duty
15 meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
16 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
17 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
18 provide PLAINTIFF with a second off-duty meal period each workday in which she was
19 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited meal
20 and rest breaks without additional compensation and in accordance with DEFENDANT’S strict
21 corporate policy and practice. DEFENDANT also provided PLAINTIFF with paystubs that
22 failed to accurately display payments for missed meal and rest periods for certain pay periods in
23 violation of Cal. Lab. Code § 226(a). To date, DEFENDANT has not fully paid PLAINTIFF all
24 wages still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203. The
25 amount in controversy for PLAINTIFF individually does not exceed the sum or value of
26 \$75,000.

27 **JURISDICTION AND VENUE**
28

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

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

THE CALIFORNIA CLASS

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

18. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

19. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANT systematically failed to provide compliant meal and rest breaks missed by PLAINTIFF and the other members of the

1 CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this work, required
2 employees to perform this work and permitted or suffered to permit this work.

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

13 21. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
14 CLASS Members is impracticable.

15 22. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
16 California law by:

- 17 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
18 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
19 company policies, practices and procedures that failed to pay all wages due the
20 CALIFORNIA CLASS for all time worked;
- 21 b. Committing an act of unfair competition in violation of the California Unfair
22 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to
23 provide mandatory meal and/or rest breaks to PLAINTIFFS and the
24 CALIFORNIA CLASS members;
- 25 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
26 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
27 company policies, practices and procedures that uniformly and systematically
28 failed to record and pay PLAINTIFF and other members of the CALIFORNIA

1 CLASS for all time worked, including minimum wages owed and overtime
2 wages owed for work performed by these employees;

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

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

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

3 a. Without class certification and determination of declaratory, injunctive, statutory
4 and other legal questions within the class format, prosecution of separate actions
5 by individual members of the CALIFORNIA CLASS will create the risk of:

6 i. Inconsistent or varying adjudications with respect to individual members
7 of the CALIFORNIA CLASS which would establish incompatible
8 standards of conduct for the parties opposing the CALIFORNIA CLASS;
9 and/or;

10 ii. Adjudication with respect to individual members of the CALIFORNIA
11 CLASS which would as a practical matter be dispositive of interests of
12 the other members not party to the adjudication or substantially impair or
13 impede their ability to protect their interests.

14 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
15 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
16 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
17 DEFENDANT uniformly failed to pay all wages due for all time worked by the
18 members of the CALIFORNIA CLASS as required by law;

19 i. With respect to the First Cause of Action, the final relief on behalf of the
20 CALIFORNIA CLASS sought does not relate exclusively to restitution
21 because through this claim PLAINTIFF seeks declaratory relief holding
22 that the DEFENDANT's policy and practices constitute unfair
23 competition, along with declaratory relief, injunctive relief, and incidental
24 equitable relief as may be necessary to prevent and remedy the conduct
25 declared to constitute unfair competition;

26 c. Common questions of law and fact exist as to the members of the CALIFORNIA
27 CLASS, with respect to the practices and violations of California law as listed
28 above, and predominate over any question affecting only individual

CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or;
 2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will

1 obviate the need for unduly and unnecessary duplicative litigation that is
2 likely to result in the absence of certification of this action pursuant to
3 Cal. Code of Civ. Proc. § 382.

4 25. The Court should permit this action to be maintained as a Class Action pursuant
5 to Cal. Code of Civ. Proc. § 382 because:

- 6 a. The questions of law and fact common to the CALIFORNIA CLASS
7 predominate over any question affecting only individual CALIFORNIA CLASS
8 Members because the DEFENDANT's employment practices are uniform and
9 systematically applied with respect to the CALIFORNIA CLASS.
- 10 b. A Class Action is superior to any other available method for the fair and efficient
11 adjudication of the claims of the members of the CALIFORNIA CLASS because
12 in the context of employment litigation a substantial number of individual
13 CALIFORNIA CLASS Members will avoid asserting their rights individually
14 out of fear of retaliation or adverse impact on their employment;
- 15 c. The members of the CALIFORNIA CLASS are so numerous that it is
16 impractical to bring all members of the CALIFORNIA CLASS before the Court;
- 17 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
18 obtain effective and economic legal redress unless the action is maintained as a
19 Class Action;
- 20 e. There is a community of interest in obtaining appropriate legal and equitable
21 relief for the acts of unfair competition, statutory violations and other
22 improprieties, and in obtaining adequate compensation for the damages and
23 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA
24 CLASS;
- 25 f. There is a community of interest in ensuring that the combined assets of
26 DEFENDANT are sufficient to adequately compensate the members of the
27 CALIFORNIA CLASS for the injuries sustained;
- 28

- 1 g. DEFENDANT have acted or refused to act on grounds generally applicable to
2 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
3 with respect to the CALIFORNIA CLASS as a whole;
- 4 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
5 business records of DEFENDANT; and
- 6 i. Class treatment provides manageable judicial treatment calculated to bring an
7 efficient and rapid conclusion to all litigation of all wage and hour related claims
8 arising out of the conduct of DEFENDANT as to the members of the
9 CALIFORNIA CLASS.

10 26. DEFENDANT maintains records from which the Court can ascertain and
11 identify by job title each of DEFENDANT'S employees who as have been systematically,
12 intentionally and uniformly subjected to DEFENDANT'S company policy, practices and
13 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
14 any additional job titles of similarly situated employees when they have been identified.

15 **THE CALIFORNIA LABOR SUB-CLASS**

16 27. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, and Seventh,
17 causes of Action on behalf of a California sub-class, defined as all members of the
18 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR
19 SUB-CLASS") at any time during the period three (3) years prior to the filing of the original
20 complaint and ending on the date as determined by the Court (the "CALIFORNIA LABOR
21 SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy
22 for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million
23 dollars (\$5,000,000.00).

24 28. DEFENDANT, as a matter of company policy, practice and procedure, and in
25 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
26 requirements, and the applicable provisions of California law, intentionally, knowingly, and
27 willfully, engaged in a practice whereby DEFENDANT failed to provide compliant meal and
28 rest breaks to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,

1 and pay wages and premiums owed to these employees, even though DEFENDANT enjoyed the
2 benefit of this work, required employees to perform this work and permitted or suffered to
3 permit this work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-
4 CLASS Members wages and premiums to which these employees are entitled in order to
5 unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to
6 toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
7 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

8 29. DEFENDANT maintains records from which the Court can ascertain and
9 identify by name and job title, each of DEFENDANT’S employees who have been
10 systematically, intentionally and uniformly subjected to DEFENDANT’S company policy,
11 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint
12 to include any additional job titles of similarly situated employees when they have been
13 identified.

14 30. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
15 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 18 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay
19 compensation due to members of the CALIFORNIA LABOR SUB- CLASS for
20 missed meal and rest breaks in violation of the California Labor Code and
21 California regulations and the applicable California Wage Order;
- 22 b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
23 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
24 thirty (30) minute meal breaks and rest periods;
- 25 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
26 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
27 statements;

- d. Whether DEFENDANT have engaged in unfair competition by the above-listed conduct;
- e. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- f. Whether DEFENDANT's conduct was willful.

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

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing all accurate and applicable overtime rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;
- e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to

1 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
2 their employment.

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

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

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

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

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

9 i. Inconsistent or varying adjudications with respect to individual members
10 of the CALIFORNIA LABOR SUB-CLASS which would establish
11 incompatible standards of conduct for the parties opposing the
12 CALIFORNIA LABOR SUB-CLASS; or

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

17 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
18 refused to act on grounds generally applicable to the CALIFORNIA LABOR
19 SUB-CLASS, making appropriate class-wide relief with respect to the
20 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANTS
21 uniformly failed to pay all wages due for all time worked by the members of the
22 CALIFORNIA LABOR SUB-CLASS as required by law;

23 c. Common questions of law and fact predominate as to the members of the
24 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
25 violations of California Law as listed above, and predominate over any question
26 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a
27 Class Action is superior to other available methods for the fair and efficient
28 adjudication of the controversy, including consideration of:

- i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or,
 2. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- iii. In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is

likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

- 1 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
2 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
3 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 4 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
5 ascertainable from the business records of DEFENDANT. The CALIFORNIA
6 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified
7 as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS
8 PERIOD; and
- 9 i. Class treatment provides manageable judicial treatment calculated to bring an
10 efficient and rapid conclusion to all litigation of all wage and hour related claims
11 arising out of the conduct of DEFENDANT as to the members of the
12 CALIFORNIA LABOR SUB-CLASS.

13 **FIRST CAUSE OF ACTION**

14 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

20 37. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
21 Code § 17021.

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

26 Any person who engages, has engaged, or proposes to engage in unfair competition may
27 be enjoined in any court of competent jurisdiction. The court may make such orders or
28 judgments, including the appointment of a receiver, as may be necessary to prevent the
use or employment by any person of any practice which constitutes unfair competition,
as defined in this chapter, or as may be necessary to restore to any person in interest any

1 money or property, real or personal, which may have been acquired by means of such
2 unfair competition. (Cal. Bus. & Prof. Code § 17203).

3 39. By the conduct alleged herein, DEFENDANT has engaged and continues to
4 engage in a business practice which violates California law, including but not limited to, the
5 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
6 including Sections 201, 202, 203, 204, 206.5, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198,
7 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
8 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
9 unfair competition, including restitution of wages wrongfully withheld.

10 40. By the conduct alleged herein, DEFENDANT'S practices were unlawful and
11 unfair in that these practices violated public policy, were immoral, unethical, oppressive
12 unscrupulous or substantially injurious to employees, and were without valid justification or
13 utility for which this Court should issue equitable and injunctive relief pursuant to Section
14 17203 of the California Business & Professions Code, including restitution of wages wrongfully
15 withheld.

16 41. By the conduct alleged herein, DEFENDANT'S practices were deceptive and
17 fraudulent in that DEFENDANT'S uniform policy and practice failed to pay PLAINTIFF, and
18 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
19 worked, failed to pay reporting time pay, and failed to reimburse for expenses due to a
20 systematic practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
21 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
22 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. &
23 Prof. Code § 17203, including restitution of wages wrongfully withheld.

24 42. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
25 unfair and deceptive in that DEFENDANT'S employment practices caused PLAINTIFF and the
26 other members of the CALIFORNIA CLASS to be underpaid during their employment with
27 DEFENDANT.
28

1 43. By the conduct alleged herein, DEFENDANT's practices were also unfair and
2 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
3 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

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

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

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

23 48. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
24 and do, seek such relief as may be necessary to restore to them the money and property which
25 DEFENDANT have acquired, or of which PLAINTIFF and the other members of the
26 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
27 unfair business practices, including earned but unpaid wages.

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES (Cal. Lab. Code §§ 1194, 1197 and 1197.1)

(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL Defendants)

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

52. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

3 56. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
4 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
5 amount of time they work. As set forth herein, DEFENDANT's uniform policy and practice
6 was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
7 other members of the CALIFORNIA LABOR SUB-CLASS.

8 57. DEFENDANT'S uniform pattern of unlawful wage and hour practices
9 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a
10 whole, as a result of implementing a uniform policy and practice that denies accurate
11 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
12 CLASS in regards to minimum wage pay.

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

19 59. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
20 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
21 receive the correct minimum wage compensation for their time worked for DEFENDANTS.

22 60. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
23 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
24 they were entitled to, constituting a failure to pay all earned wages.

25 61. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
26 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS for the true time they worked, PLAINTIFF and the other members of the
28 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
injury in amounts which are presently unknown to them and which will be ascertained
according to proof at trial.

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

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

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

THIRD CAUSE OF ACTION

FAILURE TO PAY OVERTIME COMPENSATION
(Cal. Lab. Code §§ 204, 510, 1194 and 1198)

(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL Defendants)

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

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

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

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

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

70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

71. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA

1 LABOR SUB-CLASS for overtime worked, including, the work performed in excess of eight
2 (8) hours in a workday and/or forty (40) hours in any workweek.

3 72. In committing these violations of the California Labor Code, DEFENDANT acted
4 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
5 the California Labor Code, the Industrial Welfare Commission requirements and other
6 applicable laws and regulations.

7 73. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
8 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not
9 receive full compensation for all overtime worked.

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

18 75. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
19 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
20 they were entitled to, constituting a failure to pay all earned wages.

21 76. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
22 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
23 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
24 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
25 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
26 to accurately record and pay using the applicable overtime rate as evidenced by
27 DEFENDANT's business records and witnessed by employees.

28 77. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-
CLASS for the true time they worked, PLAINTIFF and the other members of the

1 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
2 injury in amounts which are presently unknown to them and which will be ascertained
3 according to proof at trial.

4 78. DEFENDANT knew or should have known that PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
6 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
7 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
8 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
9 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
10 applicable overtime rate.

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

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

82. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all Defendants)

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

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

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

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

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS

(Cal. Lab. Code § 226)

**(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and
against all Defendants)**

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

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

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

91. When DEFENDANT did not accurately record PLAINTIFF’s and other CALIFORNIA CLASS Members’ missed meal and rest breaks and wages owed, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, missed meal

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

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

21
22 **SEVENTH CAUSE OF ACTION**

23 **FAILURE TO PAY WAGES WHEN DUE**

24 **(Cal. Lab. Code §§201, 202, 203)**

25 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
26 **Defendants)**

1 93. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
2 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
3 paragraphs of this Complaint.

4 94. Cal. Lab. Code § 200 provides that:

5 As used in this article:(a) "Wages" includes all amounts for labor performed by
6 employees of every description, whether the amount is fixed or ascertained by the
7 standard of time, task, piece, Commission basis, or other method of calculation.
8 (b) "Labor" includes labor, work, or service whether rendered or performed under
9 contract, subcontract, partnership, station plan, or other agreement if the labor to
10 be paid for is performed personally by the person demanding payment.

11 95. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
12 an employee, the wages earned and unpaid at the time of discharge are due and payable
13 immediately."

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

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

24 97. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
25 SUB-CLASS Members' employment contract.

26 98. Cal. Lab. Code § 203 provides:

27 If an employer willfully fails to pay, without abatement or reduction, in
28 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
who is discharged or who quits, the wages of the employee shall continue as a
penalty from the due date thereof at the same rate until paid or until an action
therefor is commenced; but the wages shall not continue for more than 30 days.

 99. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
CLASS Members terminated and DEFENDANT has not tendered payment of wages, to these
employees who missed meal and rest breaks, as required by law.

100. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has, PLAINTIFF demand up to thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for a judgment against each Defendants, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:
 - a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
 - c. An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
 - d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT'S violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.
2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
 - a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wages, reporting time wages, and other compensation due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD

1 plus interest thereon at the statutory rate;

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

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

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

12 3. On all claims:

13 a. An award of interest, including prejudgment interest at the legal rate;

14 b. Such other and further relief as the Court deems just and equitable; and

15 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the
16 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194
17 and/or §1197.

18
19 DATED: _____, 2020
20

21 **ZAKAY LAW GROUP, APLC**

22
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24 By: _____

25 Shani O. Zakay
26 Attorney for Plaintiffs
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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

DATED: _____, 2020

ZAKAY LAW GROUP, APLC

By: _____
Shani O. Zakay
Attorney for Plaintiff