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Attorney for NICOLAS JENSEN

Individually and on behalf of all other similarly situated

Assigned for All Purposes

Judge William Cluster

Dept. CX101

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

NICOLAS JENSEN, an individual, on behalf
of himself, and on behalf of all persons
similarly situated,

Plaintiff,

v.

ARM STRONG TOWING SERVICE, INC., a
California Corporation; and DOES 1 through
50, Inclusive;

Defendants.

Case No. **30-2024-01402141-CU-OE-CXC**

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PROVIDE OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§510 *ET SEQ.*
3. FAILURE TO PROVIDE MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194,1197 & 1197.1;
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 REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§ 226 and 226.2; and
8. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203.

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9. Civil Penalties Pursuant to Labor Code §2699, *et seq.*, for violations of Labor Code §§ 201, 201.3, 202, 203, 204 *et seq.*, 210, 218, 218.5, 218.6, 221, 226(a), 226(a)(8), 226.2, 226.3, 232, 246, 226.7, 227.3, 510, 512, 558, 1102.5, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802 and 2804, and the California Code of Regulations

DEMAND FOR JURY TRIAL

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

THE PARTIES

1. Defendant Arm Strong Towing Service, Inc. (“DEFENDANT”) is a California Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, County of Orange. Defendant owns a towing service in Orange County.

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

3. The agents, servants and/or employees of the DEFENDANT and each of them acting on behalf of the DEFENDANT acted within the course and scope of his/her, or its authority

1 as the agent, servant and/or employee of the DEFENDANTS, and personally participated in the
2 conduct alleged herein on behalf of the DEFENDANTS with respect to the conduct alleged
3 herein. Consequently, the acts of each of the DEFENDANTS are legally attributable to the other
4 and all DEFENDANTS are jointly and severally liable to PLAINTIFF and those similarly
5 situated, for the loss sustained as a proximate result of the conduct of the DEFENDANTS' agents,
6 servants and/or employees.

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

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

18 6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on
19 an hourly basis and entitled to minimum wages, overtime pay, gratuities, and legally compliant
20 meal and rest periods from on or about June 2023 to January 25, 2024.

21 7. PLAINTIFF brings this Class Action under California Code of Civil Procedure §
22 382 on behalf of himself and on behalf of all of DEFENDANTS current and former non-exempt
23 California employees (the "CALIFORNIA CLASS") at any time during the period beginning
24 four years from the date of the filing of this Complaint and ending on a date determined by the
25 Court (the "CLASS PERIOD").

26 8. The amount in controversy for the aggregate claim of CALIFORNIA CLASS
27 members is under five million dollars (\$5,000,000.00). PLAINTIFF reserves the right to amend
28

1 the following class definitions before the Court determines whether class certification is
2 appropriate, or thereafter upon leave of Court.

3 9. PLAINTIFF brings this Class Action on behalf of himself and on behalf of the
4 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
5 incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice
6 which (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant
7 meal and rest periods or an additional hour of pay at the regular rate of compensation in *lieu*
8 thereof in violation of California Labor Code Sections 226.7(c), 512(a) and the applicable
9 Industrial Welfare Commission Wage Order, (2) failed to pay PLAINTIFF and the
10 CALIFORNIA CLASS for all hours worked in violation of, *inter alia*, California Labor Code
11 Sections 510, 1194, 1197, and 1197.1, failed to reimburse PLAINTIFF and the CALIFORNIA
12 CLASS for required expenses in violation for California Labor Code Section 2802, and (3) failed
13 to provide accurate itemized wage statements in violation of California Labor Code Sections 226
14 and 226.2.

15 10. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of
16 themselves and all others similarly situated in California to recover, among other things, unpaid
17 wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant to Labor
18 Code §§201, 201.3, 202, 203, 204 *et seq.*, 210, 218, 218.5, 218.6, 221, 226(a), 226(a)(8), 226.2,
19 226.3, 232, 246, 226.7, 227.3, 510, 512, 558, 1102.5, 1174(d), 1174.5, 1194, 1197, 1197.1,
20 1197.14, 1198, 1198.5, 1199, 2802 and 2804, *et seq.*

21 11. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
22 unfair, and deceptive business practices whereby DEFENDANTS retained and continues to retain
23 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

24 12. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
25 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
26 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
27 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal
28 and equitable relief.

1 **JURISDICTION AND VENUE**

2 13. This Court has jurisdiction over this Action pursuant to California Code of Civil
3 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
4 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
5 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

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

11 **THE CONDUCT**

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

28 **A. Meal Period Violations**

1 16. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
2 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
3 meaning the time during which an employee is subject to the control of an employer, including
4 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
5 PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS members to work
6 without paying them for all the time they were under DEFENDANTS' control. Specifically, as
7 a result of, among other reasons, PLAINTIFF's demanding work requirements, and
8 DEFENDANTS under staffing, from time-to-time, DEFENDANTS required PLAINTIFF to
9 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break.
10 Additionally, PLAINTIFF was from time-to-time interrupted by work assignments while clocked
11 out for what should have been PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF
12 and other CALIFORNIA CLASS members forfeited minimum wage and overtime wages by
13 regularly working without their time being accurately recorded and without compensation at the
14 applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not
15 to pay PLAINTIFF and other CALIFORNIA CLASS members for all time worked is evidenced
16 by DEFENDANTS' business records.

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

1 CALIFORNIA CLASS Members were, from time to time, required to remain on the premises,
2 on duty and/or on call. PLAINTIFF and other members of the CALIFORNIA CLASS therefore
3 forfeited meal breaks without additional compensation and in accordance with DEFENDANTS'
4 strict corporate policy and practice.

5 **B. Rest Period Violations**

6 18. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
7 CALIFORNIA CLASS members were also required from time-to-time to work in excess of four
8 (4) hours without being provided ten (10) minute rest periods as a result of, among other reasons,
9 their rigorous work schedules, and DEFENDANTS' inadequate staffing. Further, for the same
10 reasons these employees were denied their first rest periods of at least ten (10) minutes for some
11 shifts worked of at least two (2) to four (4) hours from time-to-time, a first and second rest period
12 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from
13 time-to-time, and a first, second, and third rest period of at least ten (10) minutes for some shifts
14 worked of ten (10) hours or more from time-to-time. PLAINTIFF and other CALIFORNIA
15 CLASS members were also not provided with one-hour wages in lieu thereof. When they were
16 provided with rest periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from
17 time to time, required to remain on the premises, on duty and/or on call. As a result of their
18 rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other
19 CALIFORNIA CLASS members were from time-to-time denied their proper rest periods by
20 DEFENDANTS and DEFENDANTS' managers.

21 **C. Unreimbursed Business Expenses**

22 19. DEFENDANTS as a matter of corporate policy, practice, and procedure,
23 intentionally, knowingly, and systematically failed to reimburse and indemnify PLAINTIFF and
24 the members of the CALIFORNIA CLASS for required business expenses they incurred in direct
25 consequence of discharging their duties on behalf of DEFENDANTS. Under California Labor
26 Code Section 2802, employers are required to indemnify employees for all expenses incurred in
27 the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an
28 employer shall indemnify his or her employee for all necessary expenditures or losses incurred

1 by the employee in direct consequence of the discharge of his or her duties, or of his or her
2 obedience to the directions of the employer, even though unlawful, unless the employee, at the
3 time of obeying the directions, believed them to be unlawful."

4 20. From time-to-time during the CLASS PERIOD, PLAINTIFF and members of the
5 CALIFORNIA CLASS were required by DEFENDANTS to use their own personal cellular
6 phones, as a result of and in furtherance of their job duties as employees for DEFENDANTS.
7 Specifically, Plaintiff and members of the CALIFORNIA CLASS, used their personal cellular
8 phones to execute their job duties. But for the use of their personal cell phones, PLAINTIFF and
9 the members of the CALIFORNIA CLASS could not complete their essential job duties.
10 Notwithstanding, DEFENDANTS did not reimburse or indemnify PLAINTIFF or the members
11 of the CALIFORNIA CLASS for the cost associated with the use of their personal cellular phones
12 for DEFENDANTS' benefit. As a result, in the course of their employment with
13 DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS incurred
14 unreimbursed business expenses which included, but were not limited to, costs related to the use
15 of their personal cellular, all on behalf of and for the benefit of DEFENDANTS.

16 21. From time-to-time during the CLASS PERIOD, PLAINTIFF and members of the
17 CALIFORNIA CLASS were required by DEFENDANTS to purchase and wear an all-black
18 clothing uniform while at work, as a result of and in furtherance of their job duties as employees
19 for DEFENDANTS. Specifically, Plaintiff and members of the CALIFORNIA CLASS, had to
20 purchase and wear all black clothing to execute their job duties. But for the use of a distinctive
21 color, specifically black clothing for uniform, PLAINTIFF and the members of the
22 CALIFORNIA CLASS could not complete their essential job duties. Notwithstanding,
23 DEFENDANTS did not reimburse or indemnify PLAINTIFF or the members of the
24 CALIFORNIA CLASS for the cost associated with the purchase and use of all black clothing for
25 DEFENDANTS' benefit. As a result, in the course of their employment with DEFENDANTS,
26 PLAINTIFF and the members of the CALIFORNIA CLASS incurred unreimbursed business
27 expenses which included, but were not limited to, costs related to the purchase of all black
28 clothing, all on behalf of and for the benefit of DEFENDANTS.

1 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

2 9. During the CLASS PERIOD, from time-to-time, DEFENDANTS failed and
3 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS
4 for all hours worked. Specifically, DEFENDANT from time-to-time required PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to perform off-the-clock work. Notwithstanding,
6 from time-to-time DEFENDANTS failed to pay PLAINTIFF and other members of the
7 CALIFORNIA CLASS necessary wages for performing work at DEFENDANTS' direction,
8 request, and benefit, while off-the clock pre-shift, post-shift, and during meal periods.

9 10. During the CLASS PERIOD, from time-to-time DEFENDANTS required
10 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work, including
11 but not limited to, preparing for the shift to start his shift. Further, as discussed *supra*, PLAINTIFF
12 and other members of the CALIFORNIA CLASS were from time to time interrupted with work
13 assignments during their off-duty meal periods without additional compensation from
14 DEFENDANTS.

15 11. DEFENDANTS directed and directly benefited from the uncompensated off-the-
16 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

17 12. DEFENDANTS controlled the work schedules, duties, protocols, applications,
18 assignments and employment conditions of PLAINTIFF and the other members of the
19 CALIFORNIA CLASS.

20 13. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
21 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
22 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
23 wages earned and owed for all the work they performed, including off-the-clock work.

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

26 15. DEFENDANTS' policies and practices deprived PLAINTIFF and the other members
27 of the CALIFORNIA CLASS of all minimum, regular and overtime wages owed for the off-the-
28 clock work activities and their required meal periods. Because PLAINTIFF and the other members

1 of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight
2 (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

3 16. DEFENDANTS knew or should have known that PLAINTIFF and the other
4 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

5 17. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
6 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control and benefit
7 for the time spent working off-the-clock pre-shift, and during meal periods. DEFENDANTS'
8 uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS
9 wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS'
10 business records.

11 **E. Wage Statement Violations**

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

20 19. From time-to-time during the CLASS PERIOD, when PLAINTIFF and other
21 CALIFORNIA CLASS members missed meal and rest breaks, were paid inaccurate missed meal
22 and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to
23 provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and
24 accurate wage statements which failed to show, among other things, all applicable hourly rates in
25 effect during the pay period and the corresponding amount of time worked at each hourly rate,
26 correct rates of pay for penalty payments or missed meal and rest periods.

27 20. In addition to the violations described above, DEFENDANTS, from time-to-time,
28 failed to provide PLAINTIFF and the CALIFORNIA CLASS members with wage statements that

1 comply with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other
2 members of the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226.
3 Further, DEFENDANTS' violations are knowing and intentional, were not isolated or due to an
4 unintentional payroll error due to clerical or inadvertent mistake.

5 **F. Unlawful Rounding Violation**

6 21. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place
7 an immutable timekeeping system to accurately record and pay PLAINTIFF and other
8 CALIFORNIA CLASS Members for the actual time these employees worked each day,
9 including overtime hours. Specifically, the DEFENDANT had in place an unlawful rounding
10 policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
11 undercompensated for all of their time worked. As a result, DEFENDANT was able to and did
12 in fact unlawfully, and unilaterally round the time recorded in DEFENDANT'S timekeeping
13 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
14 these employees for all their time worked, including the applicable overtime compensation for
15 overtime worked. As a result, PLAINTIFF, and other CALIFORNIA CLASS Members, from
16 time to time, forfeited compensation for their time worked by working without their time being
17 accurately recorded and without compensation at the applicable overtime rates.

18 22. Further, the mutability of DEFENDANT'S timekeeping system and unlawful
19 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
20 being inaccurately recorded. As a result, from time to time, DEFENDANT'S unlawful rounding
21 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work as
22 ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
23 duty meal break. Additionally, DEFENDANT'S unlawful rounding policy and practice caused
24 PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT
25 for more than ten (10) hours during a shift without receiving a second off-duty meal break.

26 **G. Timekeeping Manipulation**

27 23. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
28

1 immutable timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED
2 EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES worked each day,
3 including regular time, overtime hours, sick pay, meals, and rest breaks. As a result, DEFENDANT
4 was able to and did in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANTS'
5 timekeeping system for PLAINTIFF and AGGRIEVED EMPLOYEES in order to avoid paying
6 these employees for all hours worked, applicable overtime compensation, applicable sick pay,
7 missed meal breaks and missed rest break.

8 24. As a result, Plaintiff and AGGRIEVED EMPLOYEES, from time-to-time, forfeited
9 time worked by working without their time being accurately recorded and without compensation
10 at the applicable pay rates.

11 25. The mutability of the timekeeping system also allowed DEFENDANTS to alter
12 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
13 timekeeping system so as to create the appearance that PLAINTIFF and AGGRIEVED
14 EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were not
15 at all times provided an off-duty meal break. This practice is a direct result of DEFENDANT'S
16 uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal
17 breaks each day or otherwise compensate them for missed meal breaks.

18 26. As a result, Plaintiff and Aggrieved Employees forfeited wages due to them for all
19 hours worked at DEFENDANTS' direction, control, and benefit for the time the timekeeping system
20 was inoperable. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and
21 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is
22 evidenced by DEFENDANTS' business records.

23 27. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off
24 duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
25 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5) hours
26 during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to provide
27 PLAINTIFF with a second off-duty meal period each workday in which he was required by
28 DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF with a

1 rest break, they required PLAINTIFF to remain on duty and on-call for the rest break. DEFENDANT
2 policy caused PLAINTIFF to remain on-call and on-duty during what was supposed to be his off-
3 duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks without additional
4 compensation and in accordance with DEFENDANT'S strict corporate policy and practice.
5 Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to comply with Cal.
6 Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF for required business
7 expenses related to the personal expenses incurred for the use of his personal cell phone, and
8 purchase of any tools, on behalf of and in furtherance of his employment with DEFENDANT. To
9 date, DEFENDANT has not fully paid PLAINTIFF any penalty wages owed to her under Cal. Lab.
10 Code § 203.

11 **CLASS ACTION ALLEGATIONS**

12 28. PLAINTIFF brings the First through Eight Causes of Action as a class action
13 pursuant to California Code of Civil Procedure § 382 on behalf the CALIFORNIA CLASS,
14 defined *supra*, that worked for DEFENDANT in California at any time beginning four (4) years
15 prior to the filing of this Complaint and ending on the date as determined by the Court ("CLASS
16 PERIOD").

17 29. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been
18 deprived of wages and penalties from unpaid wages earned and due, including but not limited to,
19 unpaid meal and rest period premiums, illegal meal and rest period policies, failure to separately
20 compensate rest periods, failure to separately compensate, failure to provide accurate itemized
21 wage statements, failure to maintain required records, and interest, statutory and civil penalties,
22 attorney's fees, costs, and expenses.

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

25 31. Common questions of law and fact regarding DEFENDANT'S conduct, including
26 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failing to provide
27 legally compliant meal and rest periods, failing to reimburse business expenses, failure to provide
28 accurate itemized wage statements accurate, and failure ensure they are paid at least minimum

1 wage and overtime, exist as to all members of the class and predominate over any questions
2 affecting solely any individual members of the class. Among the questions of law and fact
3 common to the class are:

4 a. Whether DEFENDANTS maintained legally compliant meal
5 period policies and practices;

6 b. Whether DEFENDANTS maintained legally compliant rest
7 period policies and practices;

8 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
9 CALIFORNIA CLASS members accurate premium payments for
10 missed meal and rest periods;

11 d. Whether DEFENDANTS failed to pay PLAINTIFF and the
12 CALIFORNIA CLASS members accurate overtime wages and sick
13 pay;

14 e. Whether DEFENDANTS failed to pay PLAINTIFF and the
15 CALIFORNIA CLASS members at least minimum wage for all hours
16 worked;

17 f. Whether DEFENDANTS reimbursed PLAINTIFF and the
18 CALIFORNIA CLASS members for required business expenses;

19 g. Whether DEFENDANTS issued legally compliant wage
20 statements;

21 h. Whether DEFENDANTS failed to pay PLAINTIFF and other
22 CALIFORNIA CLASS members their gratuities

23 i. Whether DEFENDANTS committed an act of unfair
24 competition by systematically failing to record and pay PLAINTIFF
25 and the other members of the CALIFORNIA CLASS for all time
26 worked;

27 j. Whether DEFENDANTS committed an act of unfair
28 competition by systematically failing to record all meal and rest

breaks missed by PLAINTIFF and other CALIFORNIA CLASS members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;

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

l. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the lawful deductions.

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

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

34. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS members.

35. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

36. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests of the other CALIFORNIA CLASS members.

37. There is a strong community of interest among PLAINTIFF and the members of the CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

38. The questions of law and fact common to the CALIFORNIA CLASS members

1 predominate over any questions affecting only individual members, including legal and factual
2 issues relating to liability and damages.

3 39. A class action is superior to other available methods for the fair and efficient
4 adjudication of this controversy because joinder of all class members is impractical. Moreover,
5 since the damages suffered by individual members of the class may be relatively small, the
6 expense and burden of individual litigation makes it practically impossible for the members of the
7 class individually to redress the wrongs done to them. Without class certification and
8 determination of declaratory, injunctive, statutory, and other legal questions within the class
9 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
10 create the risk of:

11 a. Inconsistent or varying adjudications with respect to individual members of
12 the CALIFORNIA CLASS which would establish incompatible standards of
13 conduct for the parties opposing the CALIFORNIA CLASS; and/or,

14 b. Adjudication with respect to individual members of the CALIFORNIA
15 CLASS which would as a practical matter be dispositive of the interests of the other
16 members not party to the adjudication or substantially impair or impeded their
17 ability to protect their interests.

18 40. Class treatment provides manageable judicial treatment calculated to bring an
19 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
20 the conduct of DEFENDANTS.

21 **FIRST CAUSE OF ACTION**

22 **For Unlawful Business Practices**

23 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

24 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

28 42. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof.

1 Code § 17021.

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

6 Any person who engages, has engaged, or proposes to engage in
7 unfair competition may be enjoined in any court of competent
8 jurisdiction. The court may make such orders or judgments,
9 including the appointment of a receiver, as may be necessary to
10 prevent the use or employment by any person of any practice which
11 constitutes unfair competition, as defined in this chapter, or as may
12 be necessary to restore to any person in interest any money or
13 property, real or personal, which may have been acquired by means
14 of such unfair competition.

15 Cal. Bus. & Prof. Code § 17203.

16 44. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
17 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair
18 competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§
19 17200, *et seq.* (the “UCL”), by engaging and continuing to engage in business practices which
20 violates California law, including but not limited to, the applicable Industrial Wage Order(s), the
21 California Code of Regulations and the California Labor Code including Sections 201, 201.3, 202,
22 203, 204 *et seq.*, 210, 218, 218.5, 218.6, 221, 226(a), 226(a)(8), 226.2, 226.3, 232, 246, 226.7,
23 227.3, 351, 510, 512, 558, 1102.5, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5,
24 1199, 2802 and 2804 for which this Court should issue declaratory and other equitable relief
25 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the
26 conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

27 45. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair
28 in that these practices violated public policy, were immoral, unethical, oppressive, unscrupulous,

1 or substantially injurious to employees, and were without valid justification or utility for which
2 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
3 Business & Professions Code, including restitution of wages wrongfully withheld.

4 46. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
5 fraudulent in that DEFENDANTS' uniform policy and practice failed to, *inter alia*, provide the
6 legally mandated meal and rest periods, the required accurate amount of compensation for missed
7 meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage
8 statements, and unlawful deductions, due to a systematic business practice that cannot be justified,
9 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
10 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and
11 equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
12 wrongfully withheld.

13 47. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
14 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
15 other members of the CALIFORNIA CLASS to be underpaid during their employment with
16 DEFENDANTS.

17 48. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
18 unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to,
19 *inter alia*, provide the legally mandated meal and rest periods, the required accurate amount of
20 compensation for missed meal and rest periods, overtime and minimum wages owed, provide
21 accurate itemized wage statements, to PLAINTIFF and the other members of the CALIFORNIA
22 CLASS as required by Cal. Labor Code.

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

28 50. PLAINTIFF further demands on behalf of himself and on behalf of each

1 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off duty paid
2 rest period was not timely provided as required by law.

3 51. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of
4 the CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
5 calculated overtime and missed meal and rest periods premiums.

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

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

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

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

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

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANTS is restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **For Failure to Pay Overtime Compensation**

7 **[Cal. Lab. Code §§ 510, *et seq.*]**

8 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

9 18. 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 19. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period
13 beginning four years prior to the filing of the Complaint and the present (“CLASS PERIOD”)
14 bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code
15 and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these
16 employees for all overtime worked, including, work performed in excess of eight (8) hours in a
17 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

28 23. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members

1 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
2 they worked or were not accurately compensated for all overtime hours worked.

3 24. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
4 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
5 implementing a uniform policy and practice that failed to accurately record overtime worked by
6 PLAINTIFF and other CALIFORNIA CLASS members and denied accurate compensation to
7 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
8 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
9 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

16 26. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
17 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
18 compensation for all overtime worked.

19 27. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
20 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
21 and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other
22 members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement
23 that would preclude the causes of action contained herein this Complaint. Rather, the PLAINTIFF
24 brings this Action on behalf of himself and the CALIFORNIA CLASS based on DEFENDANTS'
25 violations of non-negotiable, non-waivable rights provided by the State of California.

26 28. During the CLASS PERIOD, PLAINTIFF and the other members of the
27 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
28 failure to pay all earned wages.

1 29. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
2 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
3 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
4 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
5 and did in fact work, overtime as to which DEFENDANTS failed to accurately record and pay
6 using the applicable overtime rate as evidenced by DEFENDANTS' business records and
7 witnessed by employees.

8 30. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
9 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
10 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
11 suffered and will continue to suffer an economic injury in amounts which are presently unknown
12 to them and which will be ascertained according to proof at trial.

13 31. DEFENDANTS knew or should have known that PLAINTIFF and the other
14 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
15 DEFENDANTS systematically elected, either through intentional malfeasance or gross
16 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
17 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
18 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

19 32. In performing the acts and practices herein alleged in violation of California labor
20 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
21 and provide them with the requisite overtime compensation, DEFENDANTS acted and continues
22 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
23 the CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the
24 consequences to them, and with the despicable intent of depriving them of their property and legal
25 rights, and otherwise causing them injury in order to increase company profits at the expense of
26 these employees.

27 33. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
28 recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory

1 costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a sum as
2 provided by the California Labor Code and/or other applicable statutes. To the extent overtime
3 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
4 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
5 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
6 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS members.
7 DEFENDANTS' conduct as alleged herein was willful, intentional and not in good faith. Further,
8 PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory
9 costs.

10 **THIRD CAUSE OF ACTION**

11 **For Failure to Pay Minimum Wages**

12 **[Cal. Lab. Code §§ 1194, 1194.2, 1197 and 1197.1]**

13 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

17 35. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
18 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
19 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and
20 pay minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members
21 during the CLASS PERIOD.

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

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

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

1 39. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the
2 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
3 work. For instance, as set forth herein, DEFENDANTS maintained a uniform policy that required
4 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
5 meal break without compensation. Further, as set forth herein, DEFENDANTS' uniform policy
6 and practice was to unlawfully and intentionally deny timely payment of wages due to
7 PLAINTIFF and the other members of the CALIFORNIA CLASS.

8 40. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
9 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
10 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
11 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

18 42. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
19 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
20 minimum wage compensation for their time worked for DEFENDANTS.

21 43. During the CLASS PERIOD, PLAINTIFF and the other members of the
22 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
23 failure to pay all earned wages.

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

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

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

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

26 48. Pursuant to Labor Code § 1194.2, Plaintiff and CALIFORNIA CLASS are entitled
27 to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
28 thereon.

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1 CALIFORNIA CLASS members have been damaged in an amount according to proof at trial, and
2 seek all wages earned and due, interest, penalties, expenses and costs of suit.

3 **FIFTH CAUSE OF ACTION**

4 **For Failure to Provide Required Rest Periods**

5 **[Cal. Lab. Code §§ 226.7 & 512]**

6 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

10 54. During the CLASS PERIOD, PLAINTIFF and other members of the CALIFORNIA
11 CLASS were from time to time required to work in excess of four (4) hours without being provided
12 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
13 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second
14 rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)
15 hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked
16 of ten (10) hours or more from time-to-time. PLAINTIFF and other members of the
17 CALIFORNIA CLASS were also not provided with one-hour wages in lieu thereof. As a result
18 of their rigorous work schedules, PLAINTIFF and other members of the CALIFORNIA CLASS
19 were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS'
20 managers.

21 55. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable
22 IWC Wage Order by failing to compensate PLAINTIFF and other members of the CALIFORNIA
23 CLASS who were not provided a rest period, in accordance with the applicable Wage Order, one
24 additional hour of compensation at each employee's regular rate of compensation for each
25 workday that rest period was not provided.

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

1 **SIXTH CAUSE OF ACTION**

2 **For Failure to Reimburse Employees for Required Expenses**

3 **[Cal. Lab. Code §§ 2800 and 2802, and the Applicable IWC Wage Order § 9]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

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

8 58. Cal. Labor Code §2800 provides, in pertinent part, “[a]n employer shall in all cases
9 indemnify his employee for losses caused by the employer’s want of ordinary care.”

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

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

15 60. Further, Cal. Labor Code §2902 additionally provides, in pertinent part: “(c) ... the
16 term ‘necessary expenditures or losses’ shall include all reasonable costs, including but not limited
17 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

18 61. The Applicable IWC Wage Order §9 provides that “When tools or equipment are
19 required by the employer or are necessary to the performance of a job, such tools and equipment
20 shall be provided and maintained by the employer...”

21 62. California Labor Code section 2804 mandates that this statutory right cannot be
22 waived.

23 63. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
24 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
25 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
26 DEFENDANTS’ benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
27 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
28 using their personal cellular phone and cost of tools on behalf of and for the benefit of

1 DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were
2 required by DEFENDANTS to use their personal cell phones to execute their essential job duties
3 on behalf of DEFENDANTS. Additionally, DEFENDANT required specific tools paid for by all
4 employees to execute their essential job duties on behalf of DEFENDANT. DEFENDANTS'
5 practice and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA
6 CLASS for expenses resulting from using their personal cellular phones for DEFENDANTS within
7 the course and scope of their employment for DEFENDANTS. These expenses were necessary to
8 complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to
9 assert any waiver of their expectation. Although these expenses were necessary expenses incurred
10 by PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANTS failed to
11 indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for these
12 expenses as an employer is required to do under the laws and regulations of California.

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

17 **SEVENTH CAUSE OF ACTION**

18 **For Failure to Provide Accurate Itemized Statements**

19 **[Cal. Lab. Code §§ 226 and 226.2]**

20 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

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

- 26 1. Gross wages earned;
- 27 2. Total hours worked by the employee, except for any employee
28 whose compensation is solely based on a salary and who is exempt

1 from payment of overtime under subdivision (a) of Section 515 or any
2 applicable order of the Industrial Welfare Commission;

3 3. The number of piece-rate units earned and any applicable
4 piece rate if the employee is paid on a piece-rate basis;

5 4. All deductions, provided that all deductions made on written
6 orders of the employee may be aggregated and shown as one item;

7 5. Net wages earned;

8 6. The inclusive dates of the period for which the employee is
9 paid;

10 7. The name of the employee and his or her social security
11 number, except that by January 1, 2008, only the last four digits of his
12 or her social security number or an employee identification number
13 other than a social security number may be shown on the itemized
14 statement;

15 8. The name and address of the legal entity that is the employer;
16 and

17 9. All applicable hourly rates in effect during the pay period and
18 the corresponding number of hours worked at each hourly rate by the
19 employee.

20 67. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF
21 and the other members of the CALIFORNIA CLASS with complete and accurate wage
22 statements which failed to accurately show, among other things, (1) total number of hours
23 worked, (2) net wages earned, (3) gross wages earned and (4) all applicable hourly rates in effect
24 during the pay period and the corresponding number of hours worked at each hourly rate by the
25 employee in violation of California Labor Code Section 226.

26 68. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code
27 § 226, causing injury and damages to the PLAINTIFF and the other members of the
28 CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS may

1 elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
2 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
3 period pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant
4 to Labor Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no
5 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
6 of the CALIFORNIA CLASS herein.

7 **EIGHTH CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES WHEN DUE**

9 **(Cal Lab. Code §§ 201, 202, 203, and 204)**

10 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

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

14 19. Cal. Lab. Code § 200 provides that:

15 As used in this article: (a) "Wages" includes all amounts for
16 labor performed by employees of every description, whether
17 the amount is fixed or ascertained by the standard of time,
18 task, piece, Commission basis, or other method of calculation.

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

23 20. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an
24 employee, the wages earned and unpaid at the time of discharge are due and payable
25 immediately."

26 21. Cal. Lab. Code § 202 provides, in relevant part, that:

27 If an employee not having a written contract for a definite
28 period quits his or her employment, his or her wages shall

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

11 22. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
12 Members' employment contract.

13 23. Cal. Lab. Code § 203 provides:

14 If an employer willfully fails to pay, without abatement or
15 reduction, in accordance with Sections 201, 201.5, 202, and
16 205.5, any wages of an employee who is discharged or who
17 quits, the wages of the employee shall continue as a penalty
18 from the due date thereof at the same rate until paid or until an
19 action therefor is commenced; but the wages shall not
20 continue for more than 30 days.

21 24. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
22 terminated, and DEFENDANTS has not tendered payment of wages, to these employees who
23 missed meal and rest breaks, as required by law.

24 25. Cal. Lab. Code § 204 provides in part:

25 All wages, ...earned by any person in any employment are due and payable
26 twice during each calendar month, on days designated in advance by the
27 employer as the regular paydays.

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

6 **NINTH CAUSE OF ACTION**

7 **For Violation of the Private Attorneys General Act**

8 **[Cal. Lab . Code §§ 2698 ET SEQ. (“PAGA”)]**

9 **(By PLAINTIFF and Against All DEFENDANTS)**

10 69. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs
11 as though fully set forth herein.

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

22 71. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
23 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
24 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees
25 for violation of the Labor Code may, as an alternative, be recovered through civil action brought
26 by an aggrieved employee on behalf of himself or herself and other current or former employees
27 pursuant to the procedures specified in Labor Code § 2699.3.

1 72. For all provisions of the Labor Code except those for which a civil penalty is
2 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
3 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
4 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent pay
5 period in which Defendants violated these provisions of the Labor Code.

6 73. Defendants' conduct violates numerous Wage Orders and Labor Code sections
7 including, but not limited to, the following:

- 8 a. Violation of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218.5, 218.6, 218, 221,
9 226(a), 226(a)(8), 226.2, 226.3, 226.7, 227.3, 232, 246, 510, 512, 558, 1102.5,
10 1174(d), 1174.5, 1198.5, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, 2804,
11 2698 for failure to timely pay all earned wages (including minimum wage and
12 overtime wages) owed to Plaintiff and other aggrieved employees during
13 employment and upon separation of employment as herein alleged;
- 14 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
15 Plaintiff and other aggrieved employees failure to pay premium wages for missed
16 meal periods and herein alleged;
- 17 c. Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
18 other aggrieved employees and failure to pay premium wages for missed rest
19 periods as herein alleged;
- 20 d. Violation of Labor Code § 226 for failure to provide accurate itemized wage
21 statements to Plaintiff and other aggrieved employees as herein alleged;
- 22 e. Violation of Labor Code § 1174 and 1174.5 for failure to maintain accurate and
23 complete records showing, among other things, the hours worked daily by and the
24 wages paid to aggrieved employees; and
- 25 f. Violation of Labor Code § 2800 and 2802 for failure to reimburse Plaintiff and
26 other aggrieved employees as herein alleged.

74. Plaintiff is an “AGGRIEVED EMPLOYEE” because he was employed by the alleged violator and had one or more of the violations committed against him, and therefore is properly suited to represent the interest of all the other AGGRIEVED EMPLOYEES.

75. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

76. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

77. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, on his own behalf and on behalf of all other similarly situated, prays for judgment against each DEFENDANT, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

A) That the Court certify the First, Second, Third, Fourth, Fifth, and Sixth Causes of Action 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;

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; and,

E) Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;

1 F) For economic and/or special damages in an amount according to proof with interest
2 thereon;

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

7 H) Meal and rest period compensation pursuant to California Labor Code Sections
8 226.7, 512 and the applicable IWC Wage Order; and

9 I) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

10 J) For Statutory penalties to the extent permitted by law, including those pursuant to
11 the Labor Code and IWC Wage Orders;

12 2. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

13 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
14 General Act of 2004; and

15 b. An Award of penalties, attorneys' fees, and costs of suit, as allowable under the law.

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1 3. On all claims:

2 A) An award of interest, including prejudgment interest at the legal rate;

3 B) Such other and further relief as the Court deems just and equitable; and,

4 C) An award of penalties, attorneys' fees, and cost of suit, as allowable under the law,
5 including, but not limited to, pursuant to Labor Code §203, §204, §226, §1194, §2699 *et seq.*,
6 and/or §2802.

7 D) For prejudgment and post judgment interest on each of the foregoing at the legal
8 rate from the date the obligation became due through the date of judgment in this matter.

9 E) For any other relief that is just and proper.

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11
12 Dated: May 20, 2024

13 **BARVIÉ LAW, APC**

14
15 By Nicole Barvie
16 NICOLE BARVIÉ, Esq.

17 Attorneys for Plaintiff(s)

18
19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby demand(s) trial by jury in this action.

21
22
23 Dated: May 20, 2024

24 **BARVIÉ LAW, APC**

25 By Nicole Barvie
26 NICOLE BARVIÉ, Esq.

27 Attorneys for Plaintiff(s)