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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

24CV442123

DAVID CARTER, an individual(s), on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

DELIVERIMATES, LLC, a California limited
liability company; 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.

E-FILED

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Clerk of Court

Superior Court of CA,

County of Santa Clara

24CV442123

Reviewed By: R. Walker

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;
8) FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN VIOLATION
OF CALIFORNIA LABOR CODE §2802;
9) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR CODE
§§ 2698 et seq.]

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant DELIVERIMATES, LLC (“DEFENDANT”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, owns, operates, and/or manages a logistics and delivery service as an Amazon delivery affiliate throughout the San Francisco Bay area, including in the County of Santa Clara.

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 alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

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

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

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

20 6. PLAINTIFF was employed by DEFENDANT in California from October of
21 2023 to February of 2024 and was at all times classified by DEFENDANT as a non-exempt
22 driver, paid on an hourly basis, and entitled to the legally required meal and rest periods and
23 payment of minimum and overtime wages due for all time worked.

24 7. PLAINTIFF brings this Class Action on behalf of himself and a California class,
25 defined as all persons who are or previously were employed by DEFENDANT in California and
26 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
27 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
28 determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate
claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

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

20 **JURISDICTION AND VENUE**

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

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

THE CONDUCT

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

A. Meal Period Violations

14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's demanding work requirements, high

workload, and DEFENDANT’S understaffing, DEFENDANTS required PLAINTIFF to work during the meal break during what was supposed to be PLAINTIFF’s off-duty meal break. PLAINTIFF was regularly interrupted by work assignments while clocked out for what should have been PLAINTIFF’s off-duty meal break. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime wages by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS’ uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS’ business records.

15. From time-to-time during the CLASS PERIOD, as a result of PLAINTIFF’s demanding work requirements, high workload, and DEFENDANT’S understaffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS Members were required from time to time to perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these employees were required by DEFENDANTS to work ten (10) hours of work from time to time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for limited and narrowly construed “on-duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call. PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS’ strict corporate policy and practice.

B. Rest Period Violations

16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS members were also required from time to time to work in excess of four

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

14 **C. Unreimbursed Business Expenses**

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

26 18. In the course of their employment, DEFENDANTS required PLAINTIFF and
27 other CALIFORNIA CLASS Members to use their personal cell phone as a result of and in
28 furtherance of their job duties as employees for DEFENDANT. But for the use of their own

1 personal cell phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete
2 their essential job duties. For example, PLAINTIFF and other CALIFORNIA CLASS Members
3 were required to use personal cell phones in order to contact dispatch to prevent interruption of
4 their routes on the work-provided cell phone. However, DEFENDANTS unlawfully failed to
5 reimburse PLAINTIFF and other CALIFORNIA CLASS Members for their use of their
6 personal cell phones. As a result, in the course of their employment with DEFENDANTS, the
7 PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed business
8 expenses, including but not limited to, costs related to the use of their personal cellular phones
9 all on behalf of and for the benefit of DEFENDANT.

10 **D. Wage Statement Violations**

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

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

1 21. DEFENDANT violated California Labor Codes section 226 by failing to list this
2 applicable hourly rate and the corresponding number of hours worked at the applicable hourly
3 rate for this remuneration. PLAINTIFF, and all those similarly situated CALIFORNIA CLASS
4 Members, suffered damage as a result of DEFENDANTS' aforementioned violation because he
5 could not promptly and easily determine from the wage statement alone the applicable hourly
6 rate and the corresponding number of hours worked at the applicable hourly rate for this
7 remuneration.

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

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

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

17 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
18 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
19 CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required
20 PLAINTIFF and the other members of the CALIFORNIA CLASS to return to work from meal
21 breaks early to perform off-the-clock work. From time-to-time DEFENDANTS failed to pay
22 PLAINTIFF and other members of the CALIFORNIA CLASS necessary wages for attending
23 and performing work at DEFENDANTS' direction, request and benefit, while off-the clock.

24 25. DEFENDANTS directed PLAINTIFF and other members of the CALIFORNIA
25 CLASS to clock in and out for their meal periods and continue making deliveries and
26 completing their daily routes.

27 26. DEFENDANTS directed and directly benefited from the uncompensated off-the-
28 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

1 27. DEFENDANTS controlled the work schedules, duties, protocols, applications,
2 assignments, and employment conditions of PLAINTIFF and the other members of the
3 CALIFORNIA CLASS.

4 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
5 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
6 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
7 wages earned and owed for all the work they performed, including during meal period off-the-
8 clock work.

9 29. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
10 exempt employees, subject to the requirements of the California Labor Code.

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

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

19 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
20 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
21 for the time spent while off-the-clock. DEFENDANTS' uniform policy and practice to not pay
22 PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in
23 accordance with applicable law is evidenced by DEFENDANTS' business records.

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

1 workday in which he was required by DEFENDANT to work ten (10) hours of work. When
2 DEFENDANTS provided PLAINTIFF with a rest break, they required PLAINTIFF to remain
3 on the premises, on-duty and on-call, for the rest break. DEFENDANTS' policy caused
4 PLAINTIFF to remain on-call and on-duty during what was supposed to be his off-duty meal
5 periods. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation
6 and in accordance with DEFENDANTS' strict corporate policy and practice. Moreover,
7 DEFENDANTS also provided PLAINTIFF with a paystub that failed to comply with Cal. Lab.
8 Code § 226. Further, DEFENDANTS also failed to reimburse PLAINTIFF for required business
9 expenses related to the use of his personal cell phone, on behalf of and in furtherance of his
10 employment with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF
11 the minimum and overtime compensation still owed to him, or any penalty wages owed to him
12 under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not
13 exceed the sum or value of \$75,000.

14 **F. CLASS ACTION ALLEGATIONS**

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

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

27 36. The members of the class are so numerous that joinder of all class members is
28 impractical.

1 37. Common questions of law and fact regarding DEFENDANTS' conduct,
2 including but not limited to, the off-the-clock work, unpaid meal and rest period premiums,
3 failure to accurately calculate the regular rate of pay for overtime compensation, failure to
4 accurately calculate the regular rate of compensation for missed meal and rest period premiums,
5 failing to provide legally compliant meal and rest periods, failed to reimburse for business
6 expenses, failure to provide accurate itemized wage statements, and failure to ensure they are
7 paid at least minimum wage and overtime, exist as to all members of the class and predominate
8 over any questions affecting solely any individual members of the class. Among the questions of
9 law and fact common to the class are:

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

1 enjoyed the benefit of this work, required employees to perform this work and
2 permit or suffer to permit this work;

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

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

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

10 40. PLAINTIFF will fairly and adequately represent and protect the interests of the
11 CALIFORNIA CLASS Members.

12 41. PLAINTIFF retained able class counsel with extensive experience in class action
13 litigation.

14 42. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
15 interests of the other CALIFORNIA CLASS Members.

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

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

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

1 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS
2 will create the risk of:

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

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

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

22 49. 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 competition
25 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 50. 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, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
7 1198, 2802, and 2804 for which this Court should issue declaratory and other equitable relief
8 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the
9 conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

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

8 **SECOND CAUSE OF ACTION**

9 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **THIRD CAUSE OF ACTION**

23 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

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

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

15 86. During the CLASS PERIOD, DEFENDANT paid PLAINTIFF and the
16 CALIFORNIA CLASS members less overtime than they are entitled to, constituting a failure to
17 pay all earned wages.

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

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

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

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

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

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

4 **FIFTH CAUSE OF ACTION**

5 **Failure To Provide Required Rest Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

11 97. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
12 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
13 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
14 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
15 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
16 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
17 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
18 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
19 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
20 DEFENDANT and DEFENDANT's managers. DEFENDANT's failure to provide PLAINTIFF
21 and the CALIFORNIA CLASS Members with all the legally required paid rest periods is
22 evidenced by DEFENDANT's business records.

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

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

SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code §§ 226)

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

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

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

- a. 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,
- b. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- c. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- d. net wages earned,
- e. the inclusive dates of the period for which the employee is paid,
- f. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- g. the name and address of the legal entity that is the employer, and

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

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

9 103. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
10 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
11 CLASS. These damages include, but are not limited to, costs expended calculating the correct
12 wages for all missed meal and rest breaks. These damages are difficult to estimate. Therefore,
13 PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated
14 damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and
15 one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab.
16 Code § 226, in an amount according to proof at the time of trial (but in no event more than four
17 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA
18 CLASS herein.

19 **SEVENTH CAUSE OF ACTION**

20 **Failure To Pay Wages When Due**

21 **(Cal. Lab. Code §§ 203)**

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

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

26 105. Cal. Lab. Code § 200 provides that:

27 As used in this article:
28

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

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

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

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

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

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

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

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

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

24 111. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
25 members of the CALIFORNIA CLASS whose employment has terminated, PLAINTIFF demand
26 up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all
27 employees who terminated employment during the CLASS PERIOD and demand an accounting
28 and payment of all wages due, plus interest and statutory costs as allowed by law.

1 **EIGHTH CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§ 2802)**

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

5 112. 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.

8 113. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

13 114. During the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by
14 failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS
15 for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit.
16 DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS
17 for use of their personal cellular phone all on behalf of and for the benefit of DEFENDANTS.
18 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
19 DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of
20 DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse
21 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
22 their personal cellular phones for DEFENDANTS within the course and scope of their
23 employment for DEFENDANTS. These expenses were necessary to complete their principal job
24 duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their
25 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
26 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
27 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer
28 is required to do under the laws and regulations of California.

115. PLAINTIFF therefore demands reimbursement on behalf of the members of the
CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and

1 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with
2 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

3 **NINTH CAUSE OF ACTION**

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

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

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

7 116. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint.

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

18 118. PLAINTIFF, and such persons that may be added from time to time who satisfy
19 the requirements and exhaust the administrative procedures under the Private Attorney General
20 Act, bring this Representative Action on behalf of the State of California with respect to
21 themselves and all individuals who are or previously were employed by DEFENDANT and
22 classified as non-exempt employees in California during the time period of April 23, 2023 until
23 the present (the "AGGRIEVED EMPLOYEES").

24 119. On April 23, 2024, PLAINTIFF gave written notice by to the Labor and Workforce
25 Development Agency (the "Agency") and the employer of the specific provisions of this code
26 alleged to have been violated as required by Labor Code § 2699.3. The statutory waiting period
27 for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
28 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA

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

3 120. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF and
5 the other AGGRIEVED EMPLOYEES for all of the hours they worked, including minimum wage
6 and overtime wages in violation of the Wage Order, (b) failed to provide meal and rest breaks, (c)
7 failed to provide accurate itemized wage statements, (d) failed to reimburse business expenses,
8 and (e) failed to timely pay wages, all in violation of the applicable Labor Code sections listed in
9 Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210,
10 218.5, 218.6, 226, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1,
11 1197.14, 1198, 1199, 2802, & 2804, and the applicable Industrial Wage Order(s), and thereby
12 gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of
13 civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
14 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
15 the other AGGRIEVED EMPLOYEES.

16 121. To the extent that any of the conduct and violations alleged herein did not affect
17 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
18 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
19 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
20 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor
21 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
22 committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

23 **PRAYER FOR RELIEF**

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

26 1. On behalf of the CALIFORNIA CLASS:

27 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
28 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 overtime 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 CLASS:
- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA 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 overtime compensation, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
- e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
3. On Behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private

Attorneys General Act of 2004; For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to Labor Code § 2699, *et seq.*;

4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: July 1, 2024

SELIGSON LAW P.C.

By: 
Kenneth Seligson
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: July 1, 2024

SELIGSON LAW P.C

By: 
Kenneth Seligson
Attorney for PLAINTIFF