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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

MARTINI AVANCENA , an individual(s), on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

AEROTEK, INC., a Maryland Corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No: **24STCV16392**

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED

REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
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 MARTINI AVANCENA (“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 AEROTEK, INC. (“DEFENDANT”) is a Maryland corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, Defendant owns, operates, and/or manages a recruiting and staffing agency.

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

1 or more of the events and happenings that proximately caused the injuries and damages
2 hereinafter alleged.

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

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

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

22 6. PLAINTIFF was employed by DEFENDANT in California from 2018 to
23 September of 2023, and was staffed at Wordward HRT, LLC between January 2020 and
24 September 2023. At all times Plaintiff was employed by Defendant, Plaintiff was classified by
25 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
26 required meal and rest periods and payment of minimum and overtime wages due for all time
27 worked.

28 7. PLAINTIFF brings this Class Action on behalf of himself and a California class,
defined as all persons who are or previously were employed by DEFENDANT and staffed at
Wordward HRT, LLC in California and classified as non-exempt employees (the "CALIFORNIA

1 CLASS”) at any time during the period beginning four (4) years prior to the filing of this
2 Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”). The
3 amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under
4 five million dollars (\$5,000,000.00).

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

16 9. DEFENDANTS’ uniform policies and practices alleged herein were unlawful,
17 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain
18 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

19 10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
20 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
21 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
22 injured by DEFENDANTS’ past and current unlawful conduct, and all other appropriate legal and
23 equitable relief.

24 **JURISDICTION AND VENUE**

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

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

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 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 with 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,

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

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

1 PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks without
2 additional compensation and in accordance with DEFENDANTS' strict corporate policy and
3 practice.

4 **B. Rest Period Violations**

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

18 **C. Unreimbursed Business Expenses**

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

1 unlawful, unless the employee, at the time of obeying the directions, believed them to be
2 unlawful."

3 18. In the course of their employment, DEFENDANTS required PLAINTIFF and
4 other CALIFORNIA CLASS Members to use their personal cell phone and personal vehicle as a
5 result of and in furtherance of their job duties as employees for DEFENDANT. But for the use of
6 their own personal cell phones and personal vehicles, PLAINTIFF and the CALIFORNIA CLASS
7 Members could not complete their essential job duties. For example, PLAINTIFF and other
8 CALIFORNIA CLASS Members were required to drive their personal vehicle between
9 Woodward and Benchmark to pick up and drop off parts. Additionally, DEFENDANTS required
10 PLAINTIFF and other CALIFORNIA CLASS Members to use their personal cell phone for work
11 communications. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and
12 other CALIFORNIA CLASS Members for their use of their personal cell phones and personal
13 vehicles. As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF
14 and other CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were
15 not limited to, costs related to the use of their personal cellular phones and personal vehicles, all
16 on behalf of and for the benefit of DEFENDANT.

17 **D. Wage Statement Violations**

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

26 20. From time to time during the CLASS PERIOD, when PLAINTIFF and other
27 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
28 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed

1 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
2 wage statements which failed to show, among other things, the total hours worked and all
3 applicable hourly rates in effect during the pay period and the corresponding amount of time
4 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
5 periods.

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

12 22. In addition to the violations described above, DEFENDANTS, from time to time,
13 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
14 that comply with Cal. Lab. Code § 226. Specifically, DEFENDANTS failed to include the correct
15 total number of hours worked on the wage statements.

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

20 24. The amount in controversy for PLAINTIFF individually does not exceed the sum
21 or value of \$75,000.

22 **CLASS ACTION ALLEGATIONS**

23 25. PLAINTIFF brings the First through Eighth Causes of Action as a class action
24 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current
25 and former non-exempt California employees ("CALIFORNIA CLASS") during the period
26 beginning four years prior to the filing of the Complaint and ending on a date determined by the
27 Court ("CLASS PERIOD").
28

1 26. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
2 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
3 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
4 failed to reimburse for business expenses, failure to provide accurate itemized wage statements,
5 failure to maintain required records, and interest, statutory and civil penalties, attorney's fees,
6 costs, and expenses.

7 27. The members of the class are so numerous that joinder of all class members is
8 impractical.

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

- 18 a. Whether DEFENDANTS maintained legally compliant meal period policies and
19 practices;
- 20 b. Whether DEFENDANTS maintained legally compliant rest period policies and
21 practices;
- 22 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
23 CLASS Members accurate premium payments for missed meal and rest periods;
- 24 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
25 CLASS Members accurate overtime wages;
- 26 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
27 CLASS Members at least minimum wage for all hours worked;
- 28

- 1 f. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA
2 CLASS Members for required business expenses;
- 3 g. Whether DEFENDANTS issued legally compliant wage statements;
- 4 h. Whether DEFENDANTS committed an act of unfair competition by
5 systematically failing to record and pay PLAINTIFF and the other members of the
6 CALIFORNIA CLASS for all time worked;
- 7 i. Whether DEFENDANTS committed an act of unfair competition by
8 systematically failing to record all meal and rest breaks missed by PLAINTIFF
9 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed
10 the benefit of this work, required employees to perform this work and permits or
11 suffers to permit this work;
- 12 j. Whether DEFENDANTS committed an act of unfair competition in violation of
13 the UCL, by failing to provide the PLAINTIFF and the other members of the
14 CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

19 31. PLAINTIFF will fairly and adequately represent and protect the interests of the
20 CALIFORNIA CLASS Members.

21 32. PLAINTIFF retained able class counsel with extensive experience in class action
22 litigation.

23 33. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
24 interests of the other CALIFORNIA CLASS Members.

25 34. There is a strong community of interest among PLAINTIFF and the members of
26 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
27 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
28 sustained.

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

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

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

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

FIRST CAUSE OF ACTION

Unlawful Business Practices

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

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

38. 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.

1 39. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
2 Code § 17021.

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

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

11 41. By the conduct alleged herein, DEFENDANT has engaged and continues to
12 engage in a business practice which violates California law, including but not limited to, the
13 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
14 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
15 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
16 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
17 constitute unfair competition, including restitution of wages wrongfully withheld.

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

23 43. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
24 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
25 mandated meal and rest periods and the required amount of compensation for missed meal and
26 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
27 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.

1 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
2 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

3 44. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
4 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANT.

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

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

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

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

25 49. All the acts described herein as violations of, among other things, the Industrial
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
27 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
28

1 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
2 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

19 **SECOND CAUSE OF ACTION**

20 **Failure To Pay Minimum Wages**

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

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

23 53. 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 54. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
27 for DEFENDANT'S willful and intentional violations of the California Labor Code and the
28

1 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate
2 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

5 56. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
7 the minimum so fixed is unlawful.

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

10 58. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
11 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
12 worked. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and
13 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
14 CALIFORNIA CLASS.

15 59. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
16 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
17 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
18 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

19 60. In committing these violations of the California Labor Code, DEFENDANT
20 inaccurately calculated the amount of time worked and consequently underpaid the actual time
21 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
22 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
23 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
24 laws and regulations.

25 61. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
26 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
27 minimum wage compensation for their time worked for DEFENDANT.
28

1 62. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
3 failure to pay all earned wages.

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

9 64. DEFENDANT knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA CLASS are under-compensated for their time worked.
11 DEFENDANT systematically elected, either through intentional malfeasance or gross
12 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice
13 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
14 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
15 for their time worked.

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

24 66. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
25 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
26 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
27 California Labor Code and/or other applicable statutes. To the extent minimum wage
28 compensation is determined to be owed to PLAINTIFF and the CALIFORNIA CLASS Members

1 who have terminated their employment, DEFENDANT’S conduct also violates Labor Code §§
2 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
3 Cal. Lab. Code § 203, which penalties are sought herein on behalf of PLAINTIFF and the
4 CALIFORNIA CLASS Members. DEFENDANT’S conduct as alleged herein was willful,
5 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
6 Members are entitled to seek and recover statutory costs.

7 **THIRD CAUSE OF ACTION**

8 **Failure To Pay Overtime Compensation**

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

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

11 67. 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 68. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
15 for DEFENDANT’s willful and intentional violations of the California Labor Code and the
16 Industrial Welfare Commission requirements for DEFENDANT’s failure to pay these employees
17 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
18 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

1 72. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
2 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
3 they worked, including overtime work.

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

11 74. In committing these violations of the California Labor Code, DEFENDANT
12 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
13 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
14 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
15 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
16 regulations.

17 75. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
18 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
19 compensation for overtime worked.

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

28

1 77. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
3 constituting a failure to pay all earned wages.

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

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

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

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

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

FOURTH CAUSE OF ACTION

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

83. 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.

84. During the CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. Further, from time to time, DEFENDANT failed to provide PLAINTIFF and

1 CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which
2 these employees were required by DEFENDANT to work ten (10) hours of work. As a result,
3 PLAINTIFF and other members of the CALIFORNIA CLASS forfeited meal breaks without
4 additional compensation and in accordance with DEFENDANT's strict corporate policy and
5 practice.

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

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

14 **FIFTH CAUSE OF ACTION**

15 **Failure To Provide Required Rest Periods**

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

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

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

21 88. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
22 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
23 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
24 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
25 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
26 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
27 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
28 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other

1 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
2 DEFENDANT and DEFENDANT's managers. In addition, because of DEFENDANT's pay plan
3 for PLAINTIFF and CALIFORNIA CLASS Members (being paid a flat rate only),
4 DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA CLASS Members for their
5 rest periods as required by the applicable Wage Order and Labor Code. DEFENDANT did not
6 have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other
7 CALIFORNIA CLASS Members when they worked as non-exempt sales employees. As a result,
8 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
9 all the legally required paid rest periods is evidenced by DEFENDANT's business records.

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

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

18 **SIXTH CAUSE OF ACTION**

19 **Failure To Provide Accurate Itemized Statements**

20 **(Cal. Lab. Code §§ 226)**

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

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

25 92. Cal. Labor Code § 226 provides that an employer must furnish employees with an
26 "accurate itemized" statement in writing showing:

27 a. Gross wages earned,
28

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

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

94. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate.

1 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
2 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
3 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
4 pursuant to Cal. Lab. Code § 226, 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 **SEVENTH CAUSE OF ACTION**

8 **Failure To Pay Wages When Due**

9 **(Cal. Lab. Code §§ 203)**

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

11 95. 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 96. Cal. Lab. Code § 200 provides that:

15 As used in this article:

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

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

25 98. Cal. Lab. Code § 202 provides, in relevant part, that:

26 If an employee not having a written contract for a definite period quits his or her
27 employment, his or her wages shall become due and payable not later than 72 hours
28 thereafter, unless the employee has given 72 hours previous notice of his or her intention
to quit, in which case the employee is entitled to his or her wages at the time of quitting.
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.

1 99. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
2 Members' employment contract.

3 100. Cal. Lab. Code § 203 provides:

4 If an employer willfully fails to pay, without abatement or reduction, in accordance with
5 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
6 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.

7 101. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
8 terminated, and DEFENDANT has not tendered payment of wages to these employees who were
9 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
10 required by law.

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

16 **EIGHTH CAUSE OF ACTION**

17 **Failure To Reimburse Employees for Required Expenses**

18 **(Cal. Lab. Code §§ 2802)**

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

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

23 104. Cal. Lab. Code § 2802 provides, in relevant part, that:

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

26 105. During the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by
27 failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS
28 for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit.

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

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

19 **NINTH CAUSE OF ACTION**

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

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

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

23 107. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
24 herein, the prior paragraphs of this Complaint.

25 108. PAGA is a mechanism by which the State of California itself can enforce state
26 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
27 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
28 fundamentally a law enforcement action designed to protect the public and not to benefit private

1 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
2 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
3 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
4 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
5 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

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

12 110. On April 23, 2024, PLAINTIFF gave written notice by certified mail to the Labor
13 and Workforce Development Agency (the "Agency") and the employer of the specific
14 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. The
15 statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired.
16 As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
17 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
18 to all AGGRIEVED EMPLOYEES as herein defined.

19 111. The policies, acts and practices heretofore described were and are an unlawful
20 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF and
21 the other AGGRIEVED EMPLOYEES for all of the hours they worked, including minimum wage
22 and overtime wages in violation of the Wage Order, (b) failed to provide meal and rest breaks, (c)
23 failed to provide accurate itemized wage statements, and (d) failed to timely pay wages, all in
24 violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not
25 limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 246,
26 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, & 2804, and the
27 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of
28 such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor

Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANT to pay all 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

1 damages for overtime compensation, due to PLAINTIFF and the other members of
2 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
3 thereon at the statutory rate;

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

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

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

14 3. On Behalf of the State of California and with respect to all AGGRIEVED
15 EMPLOYEES:

16 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
17 General Act of 2004;

18 4. On all claims:

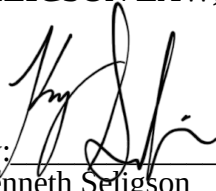
19 a. An award of interest, including prejudgment interest at the legal rate;

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

21 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
22

23 DATED: July 1, 2024

SELIGSON LAW, P.C.

24
25
26 By: 
Kenneth Seligson
27 Attorney for PLAINTIFF
28

DEMAND FOR A JURY TRIAL

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

DATED: July 1, 2024

SELIGSON LAW, PC

By: 

Kenneth Seligson
Attorney for PLAINTIFF