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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

MICHAEL CHIN, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,
v.

MOMOSAN SANTANA ROW LLC, a
Delaware Limited Liability Company d/b/a
MOMOSAN RAMEN & SAKE; MM
MANAGEMENT, LLC, a New York Limited
Liability Company, and DOES 1-50, Inclusive,
Defendants.

Case No: 24CV453864

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 AND 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 AND 512
AND THE APPLICABLE IWC WAGE
ORDER(S);

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- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 AND 512 AND THE APPLICABLE IWC WAGE ORDER(S);
 - 6) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
 - 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
 - 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF LABOR CODE § 2802;
 - 9) FAILURE TO PROVIDE TIMELY PAID WAGES IN VIOLATION OF CAL. LAB. CODE §§ 204 and 210

DEMAND FOR A JURY TRIAL

PLAINTIFF MICHAEL CHIN (“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:

PRELIMINARY ALLEGATIONS

A. Defendants

1. Defendant MOMOSAN SANTANA ROW LLC D/B/A MOMOSAN RAMEN & SAKE (“DEFENDANT MOMOSAN”), is a Delaware limited liability company, registered as a foreign limited liability company in California, that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the State of California, County of Santa Clara, and owns, operates, and/or manages restaurants.

2. Defendant MM MANAGEMENT, LLC (“DEFENDANT MM”), is a New York limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the State of California, County of Santa Clara, and owns, operates, and/or manages restaurants.

1 3. PLAINTIFF alleges a unity of interest and ownership among DEFENDANTS,
2 eliminating any distinct separation between them. All Defendants are referred to herein as
3 “DEFENDANTS.”

4 4. PLAINTIFF alleges that this unity of interest and ownership between
5 DEFENDANTS and their controlling parties has dissolved any separate corporate identities.

6 5. PLAINTIFF alleges that DEFENDANTS’ corporate structure is used to shield
7 liability for their unlawful acts.

8 6. PLAINTIFF further alleges that the failure to disregard the various corporate
9 entities would promote injustice.

10 7. DEFENDANT MM operates two restaurants in the State of California, one in
11 Napa County and the other in Santa Clara County, offering upscale, modern Japanese dining
12 experiences.

13 8. DEFENDANTS have employed PLAINTIFF in California from in or about May
14 2024 to November 2024 at DEFENDANT MOMOSAN as a non-exempt employee, paid on an
15 hourly basis and entitled to legally required meal and rest periods and payment of minimum and
16 overtime wages due for all time worked.

17 9. PLAINTIFF received onboarding documents indicating DEFENDANT
18 MOMOSAN as PLAINTIFF’S employer that featured the logo of DEFENDANT MM in the
19 heading. In addition, PLAINTIFF received the Morimoto Restaurants Employee Handbook.
20 DEFENDANT MM also required PLAINTIFF to obtain a certification in sexual harassment
21 prevention to satisfy DEFENDANT MM’s “policies regarding sexual harassment prevention.”

22 10. PLAINTIFF brings this Class Action Complaint on behalf of himself and a
23 California class, defined as all persons who are or previously were employed by Momosan
24 Santana Row LLC D/B/A Momosan Ramen & Sake, and/or MM Management, LLC, and/or
25 DOES 1-50 in California and classified as hourly non-exempt employees (the “CALIFORNIA
26 CLASS”) at any time during the period beginning four (4) years prior to the filing of this
27 Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”). The
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1 amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under
2 five million dollars (\$5,000,000.00).

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

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

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

1 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
2 Defendants' agents, servants and/or employees.

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

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

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

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

22 **JURISDICTION AND VENUE**

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

27 19. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because DEFENDANTS operates in Santa Clara County, California,

1 employs the CALIFORNIA CLASS in parts of this County, and committed the wrongful conduct
2 herein alleged in this County against the CALIFORNIA CLASS.

3 **JOINT EMPLOYER**

4 20. Section 558 of the California Labor Code provides that “any employer *or other*
5 *person* acting on behalf of an employer who violates, or causes to be violated, a section of this
6 chapter or any provision regulating hours and days of work in any order of the Industrial Welfare
7 Commissions shall be subject to a civil penalty...” (*Lab. Code* § 558(a).);

8 21. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other*
9 *person* acting either individually or as an officer, agent, or employee of another person, who pays
10 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state
11 or local law, or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code* §
12 1197.1(a).)

13 22. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have
14 held that a corporate employer’s owners, officers and directors, are subject to civil penalties for
15 the employer’s failure to pay appropriate wages to its employees, and, since liability under either
16 558 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings are
17 necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v.*
18 *Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203
19 Cal.App.4th 1112, 1145-1146.

20 23. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS,
21 and each of them, are subject to civil penalties for their failure to pay PLAINTIFF and the
22 AGGRIEVED EMPLOYEES, defined below, the appropriate wages as complained of herein and
23 proximately caused the complaints, injuries, and damages alleged herein.

24 24. At all relevant times, each DEFENDANT, whether named or fictitious, was the
25 agent, employee or other person acting on behalf of each other Defendant, and, in participating in
26 the acts alleged in this Complaint, acted within the scope of such agency or employment and
27 ratified the acts of the other.
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1 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without
2 paying them for all the time they were under DEFENDANTS' control.

3 29. Specifically, at times, DEFENDANTS required PLAINTIFF to continue working
4 during what would otherwise have been PLAINTIFF'S off-duty meal break. At the start of
5 PLAINTIFF'S employment, DEFENDANTS had PLAINTIFF sign a meal waiver. PLAINTIFF
6 generally worked six hour shifts, but on occasions when shifts extended beyond six hours,
7 DEFENDANTS did not consistently provide a meal break.

8 30. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited
9 minimum wage and overtime compensation by regularly working without their time being
10 accurately recorded and without compensation at the applicable minimum wage and overtime
11 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
12 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
13 records.

14 31. From time to time during the CLASS PERIOD, as a result of their rigorous work
15 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
16 CALIFORNIA CLASS Members are unable to take thirty (30) minute off-duty meal breaks and
17 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA
18 CLASS Members were required to perform work as ordered by DEFENDANTS for more than
19 five (5) hours during some shifts without receiving a meal break. The nature of the work
20 performed by PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the
21 limited and narrowly construed "on-duty" meal period exception. DEFENDANTS' failure to
22 provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks
23 is evidenced by DEFENDANTS' business records. PLAINTIFF and other members of the
24 CALIFORNIA CLASS, therefore, forfeit meal breaks without additional compensation and in
25 accordance with DEFENDANTS' strict corporate policy and practice.

26 **B. Rest Period Violations**

27 32. During the CLASS PERIOD, for these same reasons, PLAINTIFF and other
28 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without

1 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
2 DEFENDANTS' policies and practices. Further, for the same reasons, these employees were
3 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
4 to four (4) hours from time to time, and a first and second rest period of at least ten (10) minutes
5 for some shifts worked of between six (6) and eight (8) hours from time to time. PLAINTIFF and
6 other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu*
7 thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing,
8 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
9 proper rest periods by DEFENDANTS.

10 **C. Wage Statement Violations**

11 33. California Labor Code Section 226 requires an employer to furnish its employees
12 accurate itemized wage 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 34. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS
21 Members missed meal and rest breaks, or were paid inaccurately for missed meal and rest period
22 premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide
23 PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage
24 statements which failed to show, among other things, the total hours worked and all applicable
25 hourly rates in effect during the pay period, and the corresponding amount of time worked at each
26 hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

27 35. DEFENDANTS, therefore failed to provide PLAINTIFF and the CALIFORNIA
28 CLASS Members with wage statements that comply with Cal. Lab. Code § 226.

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

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

6 37. During the CLASS PERIOD, DEFENDANTS regularly failed to accurately pay
7 PLAINTIFF and other members of the CALIFORNIA CLASS for all hours worked.

8 38. During the CLASS PERIOD, DEFENDANTS required PLAINTIFF and other
9 members of the CALIFORNIA CLASS to perform pre-shift or post-shift work, including but not
10 limited to, replenishing the bar, cleaning and throwing out the trash. This resulted in PLAINTIFF
11 and other members of the CALIFORNIA CLASS working while off-the-clock. DEFENDANTS
12 managers had a regular practice of clocking employees out of their shifts at the end of the day.

13 39. DEFENDANTS directed and directly benefited from the uncompensated off-the-
14 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

15 40. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
16 assignments, and employment conditions of PLAINTIFF and the other members of the
17 CALIFORNIA CLASS.

18 41. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
19 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
20 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
21 wages earned and owed for all the work they performed.

22 42. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
23 exempt employees, subject to the requirements of the California Labor Code.

24 43. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
25 CALIFORNIA CLASS Members of all minimum regular and overtime wages owed for the off-
26 the-clock work activities. On occasion, PLAINTIFF and the other members of the CALIFORNIA
27 CLASS worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
28 therefore DEFENDANTS' policies and practices also deprived them of overtime pay.

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

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

9 **E. Timekeeping Manipulation**

10 46. During the CLASS PERIOD, DEFENDANTS did not accurately record and pay
11 PLAINTIFF and other members of the CALIFORNIA CLASS for the actual time PLAINTIFF
12 and other members of the CALIFORNIA CLASS worked each day, including regular time,
13 overtime hours, meal and rest breaks. As a result, DEFENDANTS were able to and did in fact,
14 unlawfully and unilaterally alter the time recorded in DEFENDANTS' timekeeping system for
15 PLAINTIFF and other members of the CALIFORNIA CLASS to avoid paying these employees
16 for all hours worked, applicable overtime compensation, and applicable meal breaks and rest
17 break premiums.

18 47. DEFENDANTS' managers had a regular practice to clock employees out of their
19 shifts without their knowledge or consent.

20 48. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
21 time-to-time, forfeited time worked by working without their time being accurately recorded and
22 without compensation at the applicable pay rates.

23 49. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
24 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
25 for the time their records were manipulated. DEFENDANTS' uniform policy and practice to not
26 pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in
27 accordance with applicable law is evidenced by DEFENDANTS' business records.
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1 **F. Unreimbursed Business Expenses**

2 50. DEFENDANTS as a matter of corporate policy, practice, and procedure,
3 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
4 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and
5 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf
6 of DEFENDANTS. Under California Labor Code Section 2802, employers are required to
7 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
8 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
9 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
10 of his or her duties, or of his or her obedience to the directions of the employer, even though
11 unlawful, unless the employee, at the time of obeying the directions, believed them to be
12 unlawful."

13 51. In the course of their employment, DEFENDANTS required PLAINTIFF and
14 other CALIFORNIA CLASS Members to use their personal cell phones as a result of and in
15 furtherance of their job duties as employees for DEFENDANT. But for the use of their own
16 personal cell phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete
17 their essential job duties because DEFENDANTS instructed PLAINTIFF and other
18 CALIFORNIA CLASS Members to contact their managers using a cellular application. However,
19 DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
20 Members for their use of their personal cell phones. As a result, in the course of their employment
21 with DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS Members incurred
22 unreimbursed business expenses, but were not limited to, costs related to the use of their personal
23 cellular phones, all on behalf of and for the benefit of DEFENDANT.

24 52. DEFENDANTS required PLAINTIFF and other CALIFORNIA CLASS Members
25 to wear a uniform provided by DEFENDANTS. However, DEFENDANTS expected PLAINTIFF
26 and other CALIFORNIA CLASS Members to wear slip-on shoes and white pants, which they
27 were required to purchase at their own expense. Additionally, PLAINTIFF and other
28 CALIFORNIA CLASS Members incurred costs for the cleaning and maintenance of these

1 uniforms. DEFENDANTS failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
2 Members for the expenses associated with meeting these uniform requirements.

3 **G. Violations for Untimely Payment of Wages During and Following Separation of**
4 **Employment**

5 53. Pursuant to California Labor Code sections 204 and 210, PLAINTIFF and the
6 CALIFORNIA CLASS Members were entitled to the timely payment of wages during their
7 employment. PLAINTIFF and the CALIFORNIA CLASS Members, from time to time, did not
8 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
9 meal period premium wages, and rest period premium wages within the permissible time period.
10 Moreover, pursuant to California Labor Code sections 201 through 203, PLAINTIFF and the
11 CALIFORNIA CLASS Members were entitled to the timely payment of wages following their
12 separation from employment.

13 **CLASS ACTION ALLEGATIONS**

14 54. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
15 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
16 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
17 illegal meal and rest period policies, failed to compensate for off-the-clock work, failure to
18 provide accurate itemized wage statements, and interest, statutory and civil penalties, attorney's
19 fees, costs, and expenses.

20 55. The members of the class are so numerous that joinder of all class members is
21 impractical.

22 56. Common questions of law and fact regarding DEFENDANTS' conduct, including
23 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failing to provide
24 legally compliant meal and rest periods, failure to provide accurate itemized wage statements, and
25 failure to ensure they are paid at least minimum wage and overtime, exist as to all members of the
26 class and predominate over any questions affecting solely any individual members of the class.
27 Among the questions of law and fact common to the class are:
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- a. Whether DEFENDANTS maintained legally compliant meal period policies and practices;
- b. Whether DEFENDANTS maintained legally compliant rest period policies and practices;
- c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members premium payments for missed meal and rest periods;
- d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- f. Whether DEFENDANTS issued legally compliant wage statements;
- g. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- h. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- i. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work, and permits or suffers to permit this work;

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

58. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and PLAINTIFF has the same interests as the other members of the class.

59. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

1 60. PLAINTIFF retained able class counsel with extensive experience in class action
2 litigation.

3 61. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
4 interest of the other CALIFORNIA CLASS Members.

5 62. There is a strong community of interest among PLAINTIFF and the members of
6 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
7 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
8 sustained.

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

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

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

65. 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 DEFENDANT.

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)

66. 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.

67. DEFENDANTS are a “person” as that term is defined under Cal. Bus. And Prof. Code § 17021.

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

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or 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 money or property, real or personal, which may have been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code § 17203).

69. By the conduct alleged herein, DEFENDANTS have engaged and continue to engage in a business practice that violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 351, 558, 1194, 1197, 1197.1, 1198, 2802, and 2804 and for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and

1 remedy the conduct held to constitute unfair competition, including restitution of wages
2 wrongfully withheld.

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

9 71. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
10 fraudulent in that DEFENDANTS' uniform policy and practice failed to provide the legally
11 mandated meal and rest periods and the required amount of compensation for missed meal and
12 rest periods, and failed to pay minimum and overtime wages owed, due to a systematic business
13 practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
14 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
15 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
16 including restitution of wages wrongfully withheld.

17 72. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
18 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
19 other members of the CALIFORNIA CLASS to be underpaid during their employment with
20 DEFENDANTS.

21 73. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
22 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
23 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS Members as
24 required by Cal. Lab. Code §§ 226.7 and 512.

25 74. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
27 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
28

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

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

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

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

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

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

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

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

5 **SECOND CAUSE OF ACTION**

6 **Failure To Pay Minimum Wages**

7 **(Cal. Lab. Code §§ 1194, 1194.2, 1194.5, 1197 and 1197.1 IWC Wage Order 5-2001 §4)**

8 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL DEFENDANTS)**

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

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

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

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

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

23 86. Wage Order No. 5-2001, §4 requires employers to pay an employee one hour's pay
24 at the minimum wage in addition to the employee's pay for that workday when an employee
25 works a split shift.

26 87. DEFENDANTS 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 work. As set forth herein, DEFENDANTS' 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 88. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
4 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
5 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
6 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay and split
7 shift premiums owed.

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

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

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

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

25 93. DEFENDANTS knew or should have known that PLAINTIFF and the other
26 members of the CALIFORNIA CLASS were under-compensated for their time worked.
27 DEFENDANTS systematically elected, either through intentional malfeasance or gross
28 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice

1 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
2 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages for
3 their time worked.

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

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

23 **THIRD CAUSE OF ACTION**

24 **Failure To Pay Overtime Compensation**

25 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

26 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL DEFENDANTS)**

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

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

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

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

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

18 101. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
19 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
20 they worked, which from time to time included overtime work.

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

1 103. In committing these violations of the California Labor Code, DEFENDANTS
2 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
3 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
4 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
5 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
6 regulations.

7 104. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
9 overtime compensation for their time worked for DEFENDANTS.

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

18 106. During the CLASS PERIOD, PLAINTIFF and the other members of the
19 CALIFORNIA CLASS were paid less for regular and overtime hours worked than they were
20 entitled to, constituting a failure to pay all earned wages.

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

1 108. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
2 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
3 amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA
4 CLASS have suffered and will continue to suffer an economic injury in amounts which are
5 presently unknown to them, and which will be ascertained according to proof at trial.

6 109. DEFENDANTS knew or should have known that PLAINTIFF and the other
7 members of the CALIFORNIA CLASS were under compensated for their time worked.
8 DEFENDANTS systematically elected, either through intentional malfeasance or gross
9 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
10 procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
11 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct wages for their
12 time worked.

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

21 111. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
22 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
23 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
24 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
25 determined to be owed to the PLAINTIFF and the CALIFORNIA CLASS Members who have
26 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
27 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
28 Code § 203, which penalties are sought herein. DEFENDANTS' conduct as alleged herein was

1 willful, intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
2 Members are entitled to seek and recover statutory costs.

3 **FOURTH CAUSE OF ACTION**

4 **Failure To Provide Required Meal Periods**

5 **(Cal. Lab. Code §§ 226.7 & 512)**

6 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)**

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

10 113. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally
11 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
12 required by the applicable Wage Order and Labor Code. The nature of the work performed by
13 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
14 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
15 rigorous work schedules, and DEFENDANTS' policies and practices, PLAINTIFF and other
16 CALIFORNIA CLASS Members were often not fully relieved of duty by DEFENDANTS for
17 their meal periods and/or were interrupted during their meal periods. Additionally,
18 DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
19 legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
20 DEFENDANTS' employee testimony and employee timesheets. As a result, PLAINTIFF and
21 other members of the CALIFORNIA CLASS forfeited meal breaks without additional
22 compensation and in accordance with DEFENDANTS' strict policy and practice.

23 114. DEFENDANTS further violated California Labor Code §§ 226.7 and the
24 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
25 Members who were not provided a meal period, in accordance with the applicable Wage Order,
26 one additional hour of compensation at each employee's regular rate of pay for each workday that
27 a meal period was not provided.
28

1 115. 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)**

8 116. 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.

11 117. 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 and the nature and constraints
19 of the job, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their
20 proper rest periods by DEFENDANTS and DEFENDANTS' managers. In addition,
21 DEFENDANTS failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members
22 for their rest periods as required by the applicable Wage Order and Labor Code. As a result,
23 DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
24 all the legally required paid rest periods is evidenced by DEFENDANTS' business records.

25 118. DEFENDANTS further violated California Labor Code §§ 226.7 and the
26 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
27 Members who were not provided a rest period, in accordance with the applicable Wage Order,
28

one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

119. 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 Pay Wages When Due Following Separation of Employment

(Cal. Lab. Code § 201-203)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)

120. 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.

121. Cal. Lab. Code § 200 provides that:

As used in this article:

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

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

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

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

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

130. When DEFENDANTS did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANTS violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

131. DEFENDANTS 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. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to

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

6 **EIGHTH CAUSE OF ACTION**

7 **Failure to Reimburse Business Expenses**

8 **(Cal. Lab. Code §2802)**

9 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all DEFENDANTS)**

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

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

16 134. Cal. Lab. Code § 2802 provides, in relevant part, that:

17 An employer shall indemnify his or her employee for all necessary expenditures or losses
18 incurred by the employee in direct consequence of the discharge of his or her duties, or of
19 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.

20 135. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal.
21 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
22 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
23 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
24 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
25 using their personal cellular phone on behalf of and for the benefit of DEFENDANTS.
26 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
27 DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of
28 DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse

1 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
2 their personal cellular phones and vehicles for DEFENDANTS within the course and scope of
3 their employment for DEFENDANTS. These expenses were necessary to complete their
4 principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any
5 waiver of their expectation. Although these expenses were necessary expenses incurred by
6 PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify
7 and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as
8 an employer is required to do under the laws and regulations of California.

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

13 **NINTH CAUSE OF ACTION**

14 **Failure to Provide Timely Pay Wages**

15 **(Cal. Lab. Code §§ 204 and 210)**

16 137. PLAINTIFF incorporates by reference the allegations contained in Paragraphs 1
17 through 136, and each and every part thereof with the same force and effect as though fully set
18 forth herein.

19 138. At all times herein set forth, Cal. Lab. Code § 204 provides that all wages earned
20 by any person in any employment between the 1st and 15th days, inclusive, of any calendar
21 month, other than those wages due upon termination of an employee, are due and payable between
22 the 16th and 26th day of the month during which the labor was performed.

23 139. At all times herein set forth, Cal. Lab. Code § 204 provides that all wages earned
24 by any person in any employment between the 16th and the last day, inclusive, of any calendar
25 month, other than those wages due upon termination of an employee, are due and payable between
26 the 1st and the 10th day of the following month.

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
9 exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of
10 costs for 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 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
15 CLASS incurred in the course of their job duties, plus interest, and costs of suit.

16 3. On all claims:

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

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

19 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the
20 law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or §
21 1194.

22
23 DATED: December 12, 2024

24 **SELIGSON LAW P.C**

25
26 By: Kenneth Seligson

Kenneth Seligson

Jared R. Sohn

Attorneys for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

DATED: December 12, 2024

SELIGSON LAW P.C.

By: *Kenneth Seligson*
Kenneth Seligson
Jared R. Sohn
Attorney for PLAINTIFF