

SUMMONS

(CITACION JUDICIAL)

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

ELECTRONICALLY FILED

9/13/2024

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

LA VILLA TACOS, LLC, a California limited liability company; and DOES 1-50, Inclusive,

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

JORGE DAMIAN, an individual, in his representative capacity, on behalf of himself and fellow current and former aggrieved employees, acting as a private attorney general,

Kern County Superior Court
By Alexandra Valles, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Kern Superior Court

Metropolitan Division Justice Building - 1215 Truxtun Ave, Bakersfield, CA 93301

CASE NUMBER:
(Número del Caso):

BCV-24-103093

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

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

Jean-Claude Lapuyade, Esq. T: 619-599-8292 JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

Shani O. Zakay, Esq. T: 619-255-9047 Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 9/13/2024

(Fecha)

TARA LEAL

Clerk, by

(Secretario)

, Deputy

(Adjunto)

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

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

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
- ☐ by personal delivery on (date):

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Monnett De La Torre (State Bar #272884)
Andrea A. Amaya Silva (State Bar #348080)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapyade@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com
aamaya@jcl-lawfirm.com

ELECTRONICALLY FILED
9/12/2024 2:35 PM
Kern County Superior Court
By Alexandra Valles, Deputy

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@jcl-lawfirm.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

JORGE DAMIAN, an individual, in his
representative capacity, on behalf of himself
and fellow current and former aggrieved
employees, acting as a private attorney general,

Plaintiff,

vs.

LA VILLA TACOS, LLC, a California limited
liability company; and DOES 1-50, Inclusive,

Defendants.

Case No: BCV-24-103093

REPRESENTATIVE ACTION
COMPLAINT FOR:

- 1) VIOLATIONS OF THE PRIVATE
ATTORNEYS GENERAL ACT
[LABOR CODE §§ 2698 ET SEQ

1 PLAINTIFF JORGE DAMIAN ("PLAINTIFF") an individual, in his representative
2 capacity, on behalf of himself and fellow current and former aggrieved employees, acting as a
3 private attorney general under the Labor Code Private Attorney General Act of 2004, § 2699, *et*
4 *seq.* ("PAGA") only, alleges on information and belief, except for his own acts and knowledge
5 which are based on personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against LA VILLA TACOS, LLC
8 ("DEFENDANT") seeking only to recover PAGA civil penalties on behalf of all current and
9 former aggrieved employees that worked for DEFENDANT. PLAINTIFF does **not seek to**
10 **recover anything other than penalties as permitted by California Labor Code § 2699.** To
11 the extent that statutory violations are mentioned for wage violations, PLAINTIFF does not seek
12 underlying general and/or special damages for those violations, but simply the civil penalties
13 permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA which permits PLAINTIFF to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANT'S
18 violations under PAGA and solely for the relief as permitted by PAGA that is, penalties and any
19 other relief the Court deems proper pursuant to PAGA. Nothing in this complaint should be
20 constructed as attempting to obtain any relief that would not be available in a PAGA- only action.

21 4. PLAINTIFF is not suing in his individual capacity; he is proceeding herein solely
22 under the PAGA, on behalf of the State of California for all aggrieved employees, including
23 himself and other aggrieved employees. Nothing in this complaint should be construed as
24 PLAINTIFF suing his individual capacity

25 5. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
26 decreased their employment-related costs by systematically violating California wage and hour
27 laws.

6. DEFENDANT’S systematic pattern of wage and hour and IWC Wage Order violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- a. Failure to provide compliant meal and rest periods;
- b. Failure to allow employees to take duty-free meal and rest periods;
- c. Failure to pay all minimum, sick pay, regular and overtime wages;
- d. Failure to correctly calculate the regular rate of pay;
- e. Failure to pay for all hours worked;
- f. Failure to maintain true and accurate records;
- g. Failure to reimburse for required business expenses;
- h. Failure to provide accurate itemized wage statements; and
- i. Failure to timely pay wages due during, and upon termination of employment.

7. PLAINTIFF reserves the right to name additional representatives throughout the State of California.

THE PARTIES

8. Defendant LA VILLA TACOS, LLC (“Defendant La Villa Tacos”) is a California Limited Liability Company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

9. DEFENDANT was the employer of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for.

10. DEFENDANT operates restaurants in California, including in the county of Kern, where PLAINTIFF worked.

11. PLAINTIFF was employed by DEFENDANT in California from May of 2022 to February of 2024 as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

12. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to himself

1 and all individuals who are or previously were employed by Defendant La Villa Tacos in
2 California and classified as non-exempt employees (“AGGRIEVED EMPLOYEES”) during the
3 time period of June 26, 2023, and the present (“PAGA Period”).

4 13. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor
5 Code § 2699(c) because he was employed by DEFENDANT and personally suffered each of the
6 alleged Labor Code violations committed by DEFENDANT.

7 14. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant
8 times were, employees of DEFENDANT, within the meanings set forth in the California Labor
9 Code and the applicable Industrial Welfare Commission Wage Order.

10 15. Each of the fictitiously named defendants participated in the acts alleged in this
11 Complaint. The true names and capacities of the Defendants named as DOES 1 THROUGH 50,
12 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting
13 forth the true names and capacities of these fictitiously named Defendants when their true names
14 are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the
15 fictitious Defendants have participated in the acts alleged in this Complaint.

16 16. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively
17 “DEFENDANTS”), were PLAINTIFF’S employers or persons acting on behalf of PLAINTIFF’S
18 employer, within the meaning of California Labor Code § 558, who violated or caused to be
19 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
20 hours and days of work in any order of the Industrial Welfare Commission and, as such, are
21 subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all
22 relevant times.

23 17. DEFENDANTS were PLAINTIFF’S employer or persons acting on behalf of
24 PLAINTIFF’S employer either individually or as an officer, agent, or employee of another person,
25 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
26 employee a wage less than the minimum fixed by California state law, and as such, are subject to
27 civil penalties for each underpaid employee.

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 2
- 3
- 4
- 5

6
7
8
9
10

11

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD
2 should be adjusted accordingly.

3 **A. Meal Period Violations**

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

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

1 PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time, required to remain
2 on duty and on call. DEFENDANTS' failure to provide PLAINTIFF and the AGGRIEVED
3 EMPLOYEES Members with legally required meal breaks is evidenced by DEFENDANT's
4 business records. PLAINTIFF and AGGRIEVED EMPLOYEES therefore forfeit meal breaks
5 without additional compensation and in accordance with DEFENDANT's strict corporate policy
6 and practice.

7 **B. Rest Period Violations**

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

23 **C. Unreimbursed Business Expenses**

24 24. DEFENDANTS as a matter of corporate policy, practice, and procedure,
25 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
26 and the other AGGRIEVED EMPLOYEES for required business expenses incurred by the
27 PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their
28 duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are

1 required to indemnify employees for all expenses incurred in the course and scope of their
2 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
3 employee for all necessary expenditures or losses incurred by the employee in direct consequence
4 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
5 even though unlawful, unless the employee, at the time of obeying the directions, believed them
6 to be unlawful."

7 25. In the course of their employment, DEFENDANTS required PLAINTIFF and
8 other AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell
9 phones and personal vehicles, and for the maintenance of their uniforms as a result of and in
10 furtherance of their job duties. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES
11 were required to use their own cell phones and vehicles and maintain their uniforms in order to
12 perform work related tasks. However, DEFENDANTS unlawfully failed to reimburse
13 PLAINTIFF and other AGGRIEVED EMPLOYEES for the personal expenses incurred for the
14 use of their personal cell phones and vehicles, and for maintaining their uniforms. As a result, in
15 the course of their employment with DEFENDANTS, PLAINTIFF and other AGGRIEVED
16 EMPLOYEES incurred unreimbursed business expenses that included, but were not limited to,
17 costs related to the use of their personal cell phones and vehicles, and maintaining their uniforms,
18 all on behalf of and for the benefit of DEFENDANTS.

19 **D. Wage Statement Violations**

20 26. California Labor Code Section 226 required an employer to furnish its employees
21 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
22 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
23 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
24 name of the employee and only the last four digits of the employee's social security number or an
25 employee identification number other than a social security number, (8) the name and address of
26 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
27 period and the corresponding number of hours worked at each hourly rate by the employee.
28

1 27. From time to time during the PAGA PERIOD, when PLAINTIFF and other
2 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
3 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
4 to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage
5 statements which failed to show, among other things, all deductions, the total hours worked and
6 all applicable hourly rates in effect during the pay period, and the corresponding amount of time
7 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
8 periods.

9 28. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
10 PLAINTIFF and the AGGRIEVED EMPLOYEES Members with wage statements that comply
11 with Cal. Lab. Code § 226.

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

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

17 30. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and continues
18 to fail to accurately pay PLAINTIFF and AGGRIEVED EMPLOYEES for all hours worked.

19 31. During the PAGA PERIOD, from time-to-time DEFENDANTS required
20 PLAINTIFF and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work. This
21 resulted in PLAINTIFF and AGGRIEVED EMPLOYEES to have to work while off-the-clock.
22 DEFENDANTS directed and directly benefited from the undercompensated off-the-clock work
23 performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

24 32. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
25 assignments, and employment conditions of PLAINTIFF and AGGRIEVED EMPLOYEES.

26 33. DEFENDANTS was able to track the amount of time PLAINTIFF and
27 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track,
28

1 or pay PLAINTIFF and AGGRIEVED EMPLOYEES all wages earned and owed for all the work
2 they performed.

3 34. PLAINTIFF and AGGRIEVED EMPLOYEES were non-exempt employees,
4 subject to the requirements of the California Labor Code.

5 35. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
6 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for
7 the off-the-clock work activities. Because PLAINTIFF and AGGRIEVED EMPLOYEES typically
8 worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
9 DEFENDANTS' policies and practices also deprived them of overtime pay.

10 36. DEFENDANT knew or should have known that PLAINTIFF and AGGRIEVED
11 EMPLOYEES' off-the-clock work was compensable under the law.

12 37. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to
13 them for all hours worked at DEFENDANTS' direction, control, and benefit for the time spent
14 working while off-the-clock, including but not limited to, time spent answering managers and
15 coworkers questions. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and
16 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is
17 evidenced by DEFENDANTS' business records.

18 **Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
19 **Redeemed Sick Pay**

20 38. From time to time during the PAGA PERIOD, DEFENDANTS failed and continue
21 to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for
22 their overtime and double time hours worked, meal and rest period premiums, and redeemed sick
23 pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due to
24 them for working overtime without compensation at the correct overtime and double time rates,
25 meal and rest period premiums, and redeemed sick pay rates. DEFENDANTS' uniform policy and
26 practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES Members at the correct rate
27 for all overtime and double time worked, meal and rest period premiums, and redeemed sick pay in
28 accordance with applicable law is evidenced by DEFENDANTS' business records.

1 39. State law provides that employees must be paid overtime at one-and-one-half times
2 their “regular rate of pay.” PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated
3 at an hourly rate plus incentive pay that was tied to specific elements of an employee’s performance.

4 40. The second component of PLAINTIFF’S and other AGGRIEVED EMPLOYEES’
5 compensation was DEFENDANTS’ non-discretionary incentive program that paid PLAINTIFF
6 and other AGGRIEVED EMPLOYEES’ incentive wages based on their performance for
7 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
8 basis with bonus compensation when the employees met the various performance goals set by
9 DEFENDANTS.

10 41. From-time-to-time, when calculating the regular rate of pay, in those pay periods
11 where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time, paid
12 meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary
13 bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as
14 part of the employees’ “regular rate of pay” and/or calculated all hours worked rather than just all
15 non-overtime hours worked. Management and supervisors described the incentive/bonus program
16 to potential and new employees as part of the compensation package. As a matter of law, the
17 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be
18 included in the “regular rate of pay.” The failure to do so has resulted in a systematic underpayment
19 of overtime and double time compensation, meal and rest period premiums, and redeemed sick pay
20 to PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANTS. Specifically,
21 California Labor Code Section 246 mandates that paid sick time for non-employees shall be
22 calculated in the same manner as the regular rate of pay for the workweek in which the non-exempt
23 employee uses paid sick time, whether or not the employee actually works overtime in that
24 workweek. DEFENDANTS’ conduct, as articulated herein, by failing to include the incentive
25 compensation as part of the “regular rate of pay” for purposes of sick pay compensation was in
26 violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Labor Code
27 Sections 201, 202, 203 and/or 204.

1 42. In violation of the applicable sections of the California Labor Code and the
2 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
3 matter of company policy, practice, and procedure, intentionally and knowingly failed to
4 compensate PLAINTIFF and AGGRIEVED EMPLOYEES at the correct rate of pay for all
5 overtime and double time worked, meal and rest period premiums, and sick pay. This uniform
6 policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the
7 correct overtime and double time compensation, meal and rest period premiums, and sick pay as
8 required by California law which allowed DEFENDANTS to illegally profit and gain an unfair
9 advantage over competitors who complied with the law. To the extent equitable tolling operates
10 to toll claims by the AGGRIEVED EMPLOYEES members against DEFENDANTS, the PAGA
11 PERIOD should be adjusted accordingly.

12 **G. Sick Pay Violations**

13 43. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after
14 July 1, 2015, works in California for the same employer for 30 or more days within a year from
15 the commencement of employment is entitled to paid sick days as specified in this section."
16 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From
17 time to time, DEFENDANTS failed to have a policy or practice in place that provided
18 PLAINTIFF and AGGRIEVED EMPLOYEES with sick days and/or paid sick leave.

19 44. California Labor Code Section 246(i) requires an employer to furnish its
20 employees with written wage statements setting forth the amount of paid sick leave available.
21 From time to time, DEFENDANTS violated Cal. Lab. Code § 246 by failing to furnish
22 PLAINTIFF and AGGRIEVED EMPLOYEES with wage statements setting forth the amount of
23 paid sick leave available.

24 **H. Violations for Untimely Payment of Wages**

25 45. Pursuant to California Labor Code section 204, PLAINTIFF and the
26 AGGRIEVED EMPLOYEES members were entitled to timely payment of wages during their
27 employment. PLAINTIFF and the AGGRIEVED EMPLOYEES members, from time to time, did
28

1 not receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
2 meal period premium wages, and rest period premium wages within permissible time period.

3 46. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
4 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant to
5 Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall become
6 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
7 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
8 wages at the time of quitting.” PLAINTIFF and the AGGRIEVED EMPLOYEES were, from time
9 to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at
10 the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202. Further, DEFENDANTS’
11 violations are willful and intentional, were not isolated due to an unintentional payroll error due
12 to clerical or inadvertent mistake.

13 47. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
14 paying all wages due at time of termination for all AGGRIEVED EMPLOYEES whose
15 employment ended during the PAGA PERIOD.

16 **I. Unlawful Deductions**

17 48. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
18 and AGGRIEVED EMPLOYEES’ pay without explanations and without authorization to do so
19 or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES Members. As a result,
20 DEFENDANTS violated Labor Code § 221.

21 **J. Unlawful Rounding Practices**

22 49. During the PAGA PERIOD, DEFENDANTS did not have in place an immutable
23 timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED
24 EMPLOYEES for the actual time these employees worked each day, including overtime hours.
25 Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted
26 in PLAINTIFF and AGGRIEVED EMPLOYEES being undercompensated for all of their time
27 worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally
28 round the time recorded in DEFENDANTS’ timekeeping system for PLAINTIFF and

1 AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time worked,
2 including the applicable overtime compensation for overtime worked. As a result, PLAINTIFF
3 and other AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for their time
4 worked by working without their time being accurately recorded and without compensation at the
5 applicable overtime rates.

6 50. Further, the mutability of DEFENDANT'S timekeeping system and unlawful
7 rounding policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES' time
8 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
9 policy and practice caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as
10 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-
11 duty meal break.

12 **K. Timekeeping Manipulation**

13 51. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
14 immutable timekeeping system to accurately record and pay PLAINTIFF and AGGRIEVED
15 EMPLOYEES for the actual time PLAINTIFF and AGGRIEVED EMPLOYEES worked each
16 day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result,
17 DEFENDANTS was able to and did in fact, unlawfully, and unilaterally alter the time recorded
18 in DEFENDANTS' timekeeping system for PLAINTIFF and AGGRIEVED EMPLOYEES in
19 order to avoid paying these employees for all hours worked, applicable overtime compensation,
20 applicable sick pay, missed meal breaks and missed rest break.

21 52. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES, from time-to-time,
22 forfeited time worked by working without their time being accurately recorded and without
23 compensation at the applicable pay rates.

24 53. The mutability of the timekeeping system also allowed DEFENDANTS to alter
25 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
26 timekeeping system so as to create the appearance that PLAINTIFF and AGGRIEVED
27 EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were not
28 at all times provided an off-duty meal break. This practice is a direct result of DEFENDANTS'

1 uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal
2 breaks each day or otherwise compensate them for missed meal breaks.

3 54. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due to
4 them for all hours worked at DEFENDANTS' direction, control and benefit for the time the
5 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
6 PLAINTIFF and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
7 applicable law is evidenced by DEFENDANTS' business records.

8 55. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
9 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.
10 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
11 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
12 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
13 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
14 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
15 DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during what was
16 supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
17 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
18 and practice. Moreover, DEFENDANTS also provided PLAINTIFF with paystubs that failed to
19 comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed to reimburse PLAINTIFF
20 for required business expenses related to the personal expenses incurred for the use of his personal
21 cell phone, personal vehicle and maintenance of his work uniforms, on behalf of and in
22 furtherance of his employment with DEFENDANTS. To date, DEFENDANTS have not fully
23 paid PLAINTIFF the minimum, overtime and double time compensation still owed to him or any
24 penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy for
25 PLAINTIFF individually does not exceed the sum or value of \$75,000.

26 ///

27 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

3

4

5
6

7
8
9
10
11
12
13
14
15
16

17
18
19

20
21
22
23

24
25
26
27
28

1 61. As of the date of this complaint, more than sixty-five (65) days after serving the
2 LWDA with notice of DEFENDANTS' violations, the LWDA has not provided any notice by
3 certified mail of its intent to investigate the DEFENDANTS' alleged violations as mandated by
4 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section
5 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause of action.

6 62. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
7 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of
8 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
9 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199,
10 2802 and 2804 in the following amounts:

11 a. For violation of Labor Code Sections 201, 202, 203, and 204, up to (\$200)
12 per AGGRIEVED EMPLOYEE per pay period [penalty per Labor Code
13 Section 2699(f)];

14 b. For violations of Labor Code Section 226(a), a civil penalty in the amount
15 of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for
16 any initial violation and one thousand dollars for each subsequent violation
17 [penalty per Labor Code Section 226.3];

18 c. For violations of Labor Code Sections 204, a civil penalty in the amount of
19 one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial
20 violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for
21 each subsequent violation [penalty per Labor Code Section 210];

22 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty
23 in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED
24 EMPLOYEE for the initial violation and hundred dollars (\$100) for each
25 underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty
26 per Labor Code Section 558];

27 e. For violations of Labor Code Section 1174(d), a civil penalty in the amount
28 of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per

1 Labor Code Section 1174.5].

2 f. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199,
3 a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED
4 EMPLOYEE per pay period for the initial violation and two hundred dollars
5 fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent
6 violation [penalty per Labor Code Section].

7 63. For all provisions of the Labor Code for which civil penalty is not specifically
8 provided, Labor Code § 2699(f) imposes upon Defendant a penalty of up to two hundred dollars
9 (\$200) for each AGGRIEVED EMPLOYEE per pay period. PLAINTIFF and the AGGRIEVED
10 EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with
11 their claims for civil penalties pursuant to Labor Code Section 2699(k)(1).

12 **PRAYER FOR RELIEF**

13 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

- 14 1. For reasonable attorney's fees and costs of suit to the extent permitted by law,
15 including pursuant to Labor Code § 2699, *et seq.*;
- 16 2. For civil penalties to the extent permitted by law pursuant to the Labor Code under
17 the Private Attorneys General Act; and
- 18 3. For such other relief as the Court deems just and proper.

19
20 DATED: September 12, 2024

21 **JCL LAW FIRM, APC**

22
23 By: 

24 Jean-Claude Lapuyade, Esq.
25 Attorney for PLAINTIFF
26
27
28

EXHIBIT 1



ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

Client #92201

June 26, 2024

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

TACOS DE LA VILLA, LLC

c/o Timothy L Kleier
2020 Eye Street, Suite 201
Bakersfield, CA 93301

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 1756 9914 89

LA VILLA TACOS, LLC

c/o Timothy L Kleier
1128 Truxtun Avenue
Bakersfield, CA 93301

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 1756 9915 33

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff JORGE DAMIAN (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendants TACOS DE LA VILLA, LLC and LA VILLA TACOS, LLC (“Defendants”). Plaintiff was employed by Defendants from May of 2022 to February of 2024, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to him and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all current and former non-exempt employees who worked for Defendants in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,

Shani O. Zakay
Attorney for Plaintiff

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Monnett De La Torre (State Bar #272884)
Andrea A. Amaya Silva (State Bar #348080)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapyade@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com
aamaya@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@jcl-lawfirm.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

JORGE DAMIAN, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

LA VILLA TACOS, LLC, a California limited
liability company; TACOS DE LA VILLA,
LLC, a California limited liability company;
and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

- 1 6) FAILURE TO PROVIDE ACCURATE
2 ITEMIZED STATEMENTS IN
3 VIOLATION OF CAL. LAB. CODE § 226;
4 7) FAILURE TO PROVIDE WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203;
7 8) FAILURE TO REIMBURSE EMPLOYEES
8 FOR REQUIRED EXPENSES IN
9 VIOLATION OF CAL. LAB. CODE § 2802.

10 **DEMAND FOR A JURY TRIAL**

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

14 **PRELIMINARY ALLEGATIONS**

15 1. Defendant LA VILLA TACOS, LLC (“Defendant La Villa Tacos”) is a California
16 limited liability company that at all relevant times mentioned herein conducted and continues to
17 conduct substantial and regular business throughout California.

18 2. Defendant TACOS DE LA VILLA, LLC (“Defendant Tacos De La Villa”) is a
19 California limited liability company that at all relevant times mentioned herein conducted and
20 continues to conduct substantial and regular business throughout California.

21 3. Defendant La Villa Tacos and Defendant Tacos De La Villa were the joint
22 employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the
23 company PLAINTIFF performed work for respectively and are therefore jointly responsible as
24 employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

25 4. DEFENDANTS operate restaurants in California, including in the county of Kern,
26 where PLAINTIFF worked.

27 5. PLAINTIFF was employed by DEFENDANTS in California from May of 2022 to
28 February of 2024 as a non-exempt employee, paid on an hourly basis, and entitled to the legally
required meal and rest periods and payment of minimum and overtime wages due for all time
worked.

1 6. PLAINTIFF brings this Class Action on behalf of himself and a California class,
2 defined as all persons who are or previously were employed by Defendant La Villa Tacos and/or
3 Defendant Tacos De La Villa in California and classified as non-exempt employees (the
4 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing
5 of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”).
6 The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is
7 under five million dollars (\$5,000,000.00).

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

19 8. The true names and capacities, whether individual, corporate, subsidiary,
20 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
21 presently unknown to PLAINTIFFS who therefore sues these DEFENDANTS by such fictitious
22 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
23 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
24 ascertained. PLAINTIFFS is informed and believes, and based upon that information and belief
25 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
26 inclusive, are responsible in some manner for one or more of the events and happenings that
27 proximately caused the injuries and damages hereinafter alleged.
28

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

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

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

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

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

28 ///

JURISDICTION AND VENUE

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

15. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ the CALIFORNIA CLASS across California, including in this County, and committed the wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

THE CONDUCT

16. 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 PLAINTIFFS 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 of pay, failed to pay PLAINTIFF and other CALIFORNIA CLASS Members redeemed sick pay at the regular rate of pay, 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

1 toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should
2 be adjusted accordingly.

3 **A. Meal Period Violations**

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

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

1 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
2 required to remain on duty and on call. DEFENDANTS' failure to provide PLAINTIFF and the
3 CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
4 DEFENDANTS' business records. As a result of their rigorous work schedules and
5 DEFENDANTS' inadequate staffing, PLAINTIFF and other members of the CALIFORNIA
6 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
7 DEFENDANTS' strict corporate policy and practice.

8 **B. Rest Period Violations**

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

23 **C. Unreimbursed Business Expenses**

24 20. DEFENDANTS as a matter of corporate policy, practice, and procedure,
25 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
26 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
27 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
28 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers

1 are required to indemnify employees for all expenses incurred in the course and scope of their
2 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
3 her employee for all necessary expenditures or losses incurred by the employee in direct
4 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
5 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
6 believed them to be unlawful."

7 21. In the course of their employment, DEFENDANTS required PLAINTIFF and
8 other CALIFORNIA CLASS Members to incur personal expenses for the use of their personal
9 vehicles and for the maintenance of work uniforms as a result of and in furtherance of their job
10 duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required to
11 use their personal vehicles and personal expenses incurred for the maintenance of work uniforms
12 in order to perform work related tasks. However, DEFENDANTS unlawfully failed to reimburse
13 PLAINTIFF and other CALIFORNIA CLASS Members for the use of their personal vehicles
14 and personal expenses incurred for the maintenance of work uniforms. As a result, in the course
15 of their employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS
16 Members incurred unreimbursed business expenses that included, but were not limited to, costs
17 related to the use of their personal vehicles and personal expenses incurred for the maintenance
18 of work uniforms, all on behalf of and for the benefit of DEFENDANT.

19 **D. Wage Statement Violations**

20 22. California Labor Code Section 226 required an employer to furnish its employees
21 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
22 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
23 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
24 name of the employee and only the last four digits of the employee's social security number or an
25 employee identification number other than a social security number, (8) the name and address of
26 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
27 period and the corresponding number of hours worked at each hourly rate by the employee.
28

23. From time to time during the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also 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 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, correct rates of pay for penalty payments or missed meal and rest periods.

24. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226.

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

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

26. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS for all hours worked.

27. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

28. DEFENDANTS directed and directly benefited from the undercompensated off-the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

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

1 30. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
2 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
3 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
4 wages earned and owed for all the work they performed.

5 31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
6 exempt employees, subject to the requirements of the California Labor Code.

7 32. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
8 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
9 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
10 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
11 eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime
12 pay.

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

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

21 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
22 **and Redeemed Sick Pay**

23 35. From time to time during the CLASS PERIOD, DEFENDANTS failed and
24 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
25 Members for their overtime and double time hours worked, meal and rest period premiums, and
26 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
27 forfeited wages due to them for working overtime without compensation at the correct overtime
28 and double time rates, meal and rest period premiums, and redeemed sick pay rates.

1 DEFENDANTS' uniform policy and practice not to pay the CALIFORNIA CLASS Members at
2 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick
3 pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

4 36. State law provides that employees must be paid overtime at one-and-one-half times
5 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
6 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
7 employee's performance.

8 37. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
9 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
10 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
11 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
12 paid on an hourly basis with bonus compensation when the employees met the various
13 performance goals set by DEFENDANTS.

14 38. However, from time to time, when calculating the regular rate of pay in those pay
15 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
16 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
17 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus
18 compensation as part of the employee's "regular rate of pay" and/or calculated all hours worked
19 rather than just all non-overtime hours worked. Management and supervisors described the
20 incentive/bonus program to potential and new employees as part of the compensation package.
21 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
22 CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted
23 in a systematic underpayment of overtime and double time compensation, meal and rest period
24 premium payments, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS
25 Members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that
26 paid sick time for non-exempt employees shall be calculated in the same manner as the regular
27 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or
28 not the employee actually works overtime in that workweek. DEFENDANTS' conduct, as

1 articulated herein, by failing to include the incentive compensation as part of the “regular rate of
2 pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
3 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

4 39. In violation of the applicable sections of the California Labor Code and the
5 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a
6 matter of company policy, practice, and procedure, intentionally and knowingly failed to
7 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
8 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
9 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain
10 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
11 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANTS, the
12 CLASS PERIOD should be adjusted accordingly.

13 **G. Unlawful Deductions**

14 40. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
15 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
16 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
17 DEFENDANTS violated Labor Code § 221.

18 **H. Timekeeping Manipulation**

19 41. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
20 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
21 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
22 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
23 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
24 unilaterally alter the time recorded in DEFENDANTS’ timekeeping system for PLAINTIFF and
25 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
26 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
27 missed rest breaks.
28

1 42. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
2 time-to-time, forfeited time worked by working without their time being accurately recorded and
3 without compensation at the applicable pay rates.

4 43. The mutability of the timekeeping system also allowed DEFENDANTS to alter
5 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
6 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
7 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
8 were not at all times provided an off-duty meal break. This practice is a direct result of
9 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
10 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

11 44. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
12 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
13 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and
14 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
15 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
16 records.

17 **I. Unlawful Rounding Practices**

18 45. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
19 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
20 CALIFORNIA CLASS Members for the actual time these employees worked each day,
21 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding
22 policy and practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being
23 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
24 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
25 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
26 these employees for all their time worked, including the applicable overtime compensation for
27 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
28

time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

46. Further, the mutability of DEFENDANTS' timekeeping system and unlawful rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members' time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break.

J. Violations for Untimely Payment of Wages

47. Pursuant to California Labor Code section 204, PLAINTIFF and the CALIFORNIA CLASS members were entitled to timely payment of wages during their employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period premium wages within permissible time period.

48. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant to Cal. Lab. Code § 202, if an employee 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." PLAINTIFF and the CALIFORNIA CLASS Members were, from time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

49. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely paying all wages due at time of termination for all CALIFORNIA CLASS Members whose employment ended during the CLASS PERIOD.

K. Sick Pay Violations

50. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from

1 the commencement of employment is entitled to paid sick days as specified in this section.”
2 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.
3 From time to time, DEFENDANTS failed to have a policy or practice in place that provided
4 PLAINTIFF and other members of the CALIFORNIA CLASS with sick days and/or paid sick
5 leave. As of January 1, 2024, Defendants failed to adhere to the law in that they failed to provide
6 and allow employees to use at least 40 hours or five days of paid sick leave per year.

7 51. California Labor Code Section 246(i) requires an employer to furnish its
8 employees with written wage statements setting forth the amount of paid sick leave available.
9 From time to time, DEFENDANTS violated Cal. Lab. Code § 246 by failing to furnish
10 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
11 forth the amount of paid sick leave available

12 52. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
13 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
14 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
15 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
16 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
17 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided
18 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the
19 rest break. DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during
20 what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and
21 rest breaks without additional compensation and in accordance with DEFENDANTS’ strict
22 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with
23 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed
24 to reimburse PLAINTIFF for required business expenses related to the personal expenses
25 incurred for the use of his personal vehicle and personal expenses incurred for the maintenance
26 of his work uniform, on behalf of and in furtherance of his employment with DEFENDANTS.
27 To date, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double
28 time compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code §

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

CLASS ACTION ALLEGATIONS

53. 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 La Villa Tacos and/or Defendant Tacos De La Villa in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”).

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

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

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

- a. Whether DEFENDANT maintained legally compliant meal period policies and practices;

- b. Whether DEFENDANT maintained legally compliant rest period policies and practices;
- c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;
- d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- g. Whether DEFENDANT issued legally compliant wage statements;
- h. Whether DEFENDANT 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 DEFENDANT 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 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- j. Whether DEFENDANT committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

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
16 the 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. DEFENDANT is 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 which 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, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802, 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 remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

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

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

3 **SECOND CAUSE OF ACTION**

4 **Failure To Pay Minimum Wages**

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

6 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

7 80. 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 81. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
11 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
12 Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate
13 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

21 85. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
22 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
23 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
24 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
25 the CALIFORNIA CLASS.

26 86. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
28

1 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
2 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

12 ///

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **Failure To Pay Overtime Compensation**

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

23 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

27 95. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
28 for DEFENDANTS' willful and intentional violations of the California Labor Code and the

1 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees
2 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
3 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

13 ///

14 99. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
15 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
16 they worked, including overtime work.

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

24 101. In committing these violations of the California Labor Code, DEFENDANTS
25 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
26 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
27 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
28

1 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
2 regulations.

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

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

14 104. During the CLASS PERIOD, PLAINTIFF and the other members of the
15 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
16 a failure to pay all earned wages.

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

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

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

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

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

26 ///

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

3

4

5
6
7

8
9
10
11
12
13
14
15
16
17
18
19
20
21

22
23
24
25
26

113. 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.

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

114. 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.

115. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to provide PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid rest periods is evidenced by DEFENDANTS' business records.

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

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code § 226)**

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

10 118. 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.

13 119. Cal. Labor Code § 226 provides that an employer must furnish employees with an
14 "accurate itemized" statement in writing showing:

- 15 a. Gross wages earned,
16 b. (2) total hours worked by the employee, except for any employee whose
17 compensation is solely based on a salary and who is exempt from payment of
18 overtime under subdivision (a) of Section 515 or any applicable order of the
19 Industrial Welfare Commission,
20 c. the number of piece-rate units earned and any applicable piece rate if the employee
21 is paid on a piece-rate basis,
22 d. all deductions, provided that all deductions made on written orders of the employee
23 may be aggregated and shown as one item,
24 e. net wages earned,
25 f. the inclusive dates of the period for which the employee is paid,
26 g. the name of the employee and his or her social security number, except that by
27 January 1, 2008, only the last four digits of his or her social security number of an
28

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.

120. 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 PLAINTIFFS 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.

121. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

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

1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code § 203)**

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

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

8 124. Cal. Lab. Code § 200 provides that:

9 As used in this article:

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

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

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

20 If an employee not having a written contract for a definite period quits his or her
21 employment, his or her wages shall become due and payable not later than 72 hours
22 thereafter, unless the employee has given 72 hours previous notice of his or her intention
23 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
24 Notwithstanding any other provision of law, an employee who quits without providing a
25 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
26 designates a mailing address. The date of the mailing shall constitute the date of payment
27 for purposes of the requirement to provide payment within 72 hours of the notice of
28 quitting.

29 127. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS
30 Members' employment contract.

31 128. Cal. Lab. Code § 203 provides:

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

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

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

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees for Required Expenses

(Cal. Lab. Code §§ 2802)

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

131. 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.

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

An employer shall indemnify his or her employee for all necessary expenditures or losses 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.

133. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which included, but were not limited to, the use of their personal vehicles and personal expenses incurred for the maintenance of work uniforms all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal vehicles and maintain work uniforms on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure

1 was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses
2 resulting from the use of their personal vehicles and personal expenses incurred for the
3 maintenance of work uniforms within the course and scope of their employment for
4 DEFENDANTS. These expenses were necessary to complete their principal job duties.
5 DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of this
6 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
7 CALIFORNIA CLASS members, DEFENDANTS failed to indemnify and reimburse
8 PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is
9 required to do under the laws and regulations of California.

10 134. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
11 by him and the CALIFORNIA CLASS members in the discharge of their job duties for
12 DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the
13 statutory rate and costs under Cal. Lab. Code § 2802.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, PLAINTIFF prays for a judgment against Defendant as follows:

16 1. On behalf of the CALIFORNIA CLASS:

- 17 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
18 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
19 b. An order temporarily, preliminarily and permanently enjoining and restraining
20 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
21 c. An order requiring DEFENDANTS to pay all overtime wages and all sums
22 unlawfully withheld from compensation due to PLAINTIFF and the other members
23 of the CALIFORNIA CLASS; and
24 d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
25 for restitution of the sums incidental to DEFENDANTS' violations due to
26 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

27 2. On behalf of the CALIFORNIA CLASS:

- 28 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth

Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

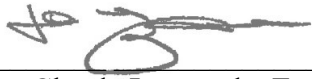
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
- e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or § 1194.
- d.

DATED: June 26, 2024

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

DATED: June 26, 2024

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

EXHIBIT