

SUM-100

SUMMONS
(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

HILTON GRAND VACATIONS COMPANY, LLC, a Delaware limited liability company, (Additional Attachment form is attached)

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

SIXTO ALEGRIA FERNANDEZ, an individual, on behalf of himself, and on behalf of all persons similarly situated,

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): Riverside Superior Court

Riverside Historic Courthouse - 4050 Main Street, Riverside, CA 92501

CASE NUMBER:
(Número del Caso):

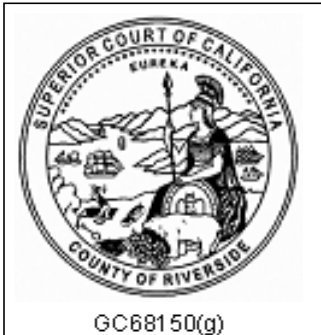
CVRI 2402069

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

DATE:
(Fecha) 04/11/2024

Clerk, by _____, Deputy
(Secretario) _____ (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)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ 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):
4. ☐ by personal delivery on (date):

SHORT TITLE:

Sixto Alegria Fernandez v. Hilton Grand Vacations Company, LLC, et al.

CASE NUMBER:

CVRI 2402069

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

HILTON RESORTS CORPORATION dba HILTON GRAND VACATIONS, a Delaware stock corporation, HILTON GRAND VACATIONS CLUB, LLC, a Delaware limited liability company; and DOES 1-50, Inclusive,

JCL LAW FIRM, APC

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

SIXTO ALEGRIA FERNANDEZ, an
individual, on behalf of himself, and on behalf
of all persons similarly situated,

Plaintiffs,

v.

HILTON GRAND VACATIONS COMPANY,
LLC, a Delaware limited liability company,
HILTON RESORTS CORPORATION dba
HILTON GRAND VACATIONS, a Delaware
stock corporation, HILTON GRAND
VACATIONS CLUB, LLC, a Delaware limited
liability company; and DOES 1-50, Inclusive,

Defendants.

Case No: **CVRI 2402069**

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 REIMBURSE EMPLOYEES
2 FOR REQUIRED EXPENSES IN
3 VIOLATION OF CAL. LAB. CODE § 2802;
4 7) FAILURE TO PROVIDE ACCURATE
5 ITEMIZED STATEMENTS IN
6 VIOLATION OF CAL. LAB. CODE § 226;
7 8) FAILURE TO PROVIDE WAGES WHEN
8 DUE IN VIOLATION OF CAL. LAB.
9 CODE §§ 201, 202 AND 203;
10 9) VIOLATION OF THE PRIVATE
11 ATTORNEYS GENERAL ACT [LABOR
12 CODE §§ 2698 ET SEQ.

13 **DEMAND FOR A JURY TRIAL**

14 PLAINTIFF SIXTO ALEGRIA FERNANDEZ (“PLAINTIFF”), an individual, on behalf
15 of himself and all other similarly situated current and former employees, allege on information and
16 belief, except for his own acts and knowledge which are based on personal knowledge, the
17 following:

18 **PRELIMINARY ALLEGATIONS**

19 1. Defendant HILTON GRAND VACATIONS COMPANY, LLC (“DEFENDANT
20 HILTON GRAND VACATIONS COMPANY”) is a Delaware limited liability company that at
21 all relevant times mentioned herein conducted and continues to conduct substantial and regular
22 business throughout California.

23 2. Defendant HILTON RESORTS CORPORATION dba HILTON GRAND
24 VACATIONS (“DEFENDANT HILTON RESORTS”) is a Delaware stock company that at all
25 relevant times mentioned herein conducted and continues to conduct substantial and regular
26 business throughout California.

27 3. Defendant HILTON GRAND VACATIONS CLUB, LLC (“DEFENDANT
28 HILTON GRAND VACATIONS CLUB”) is a Delaware limited liability company that at all
relevant times mentioned herein conducted and continues to conduct substantial and regular
business throughout California.

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1 4. Defendant HILTON GRAND VACATIONS COMPANY, Defendant HILTON
2 RESORTS CORPORATION, and Defendant HILTON GRAND VACATIONS CLUB were the
3 joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the
4 company PLAINTIFF performed work for respectively and are therefore jointly responsible as
5 employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

6 5. DEFENDANTS own and operate hotels throughout the world, including hotels in
7 the state of California, including the county of Riverside, where PLAINTIFF worked.

8 6. PLAINTIFF was employed by DEFENDANTS in California from March 2023 to
9 October 2023 as a non-exempt employee, paid an hourly basis, and entitled to the legally required
10 meal and rest periods and payment of minimum and overtime wages due for all time worked.

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

17 8. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
18 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
19 the CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice which failed to
20 lawfully compensate these employees. DEFENDANTS’ uniform policy and practice alleged
21 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANTS retained
22 and continue to retain wages due to PLAINTIFF and the other members of the CALIFORNIA
23 CLASS. PLAINTIFF and the 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 the other members of the CALIFORNIA CLASS who have been economically injured by
26 DEFENDANTS’ past and current unlawful conduct, and all other appropriate legal and equitable
27 relief.

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

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

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

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

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

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

JURISDICTION AND VENUE

15. 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 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

16. 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

17. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF and other members of the CALIFORNIA CLASS 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 rest premiums at the regular rate, failed to reimburse

1 PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue
2 to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage
3 statements showing, among other things, all applicable hourly rates in effect during the pay
4 periods and the corresponding amount of time worked at each hourly rate. DEFENDANT's
5 uniform policies and practices are intended to purposefully avoid the accurate and full payment
6 for all time worked as required by California law which allows DEFENDANT to illegally profit
7 and gain an unfair advantage over competitors who comply with the law. To the extent equitable
8 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CLASS
9 PERIOD should be adjusted accordingly.

10 **A. Meal Period Violations**

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

25 19. From time to time during the CLASS PERIOD, as a result of their rigorous work
26 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
27 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
28 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other

1 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
2 more than five (5) hours during some shifts without receiving a meal break. Further,
3 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second
4 off-duty meal period for some workdays in which these employees are required by DEFENDANT
5 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other
6 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed “on-
7 duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other
8 CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call.
9 Further, DEFENDANT required PLAINTIFF and the CALIFORNIA CLASS Members to
10 maintain cordless communication devices on them during meal periods in order to receive and
11 respond to work-related communications. DEFENDANT’s failure to provide PLAINTIFF and
12 the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
13 DEFENDANT’s business records. PLAINTIFF and other members of the CALIFORNIA CLASS
14 therefore forfeit meal breaks without additional compensation and in accordance with
15 DEFENDANT’s strict corporate policy and practice.

16 **B. Rest Period Violations**

17 20. From time to time during the CLASS PERIOD, PLAINTIFF and other
18 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
19 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
20 DEFENDANT’s inadequate staffing. Further, for the same reasons, these employees were denied
21 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
22 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
23 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
24 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
25 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
26 CLASS Members were, from time to time, required to remain on premises, on duty and/or on call.
27 Further, DEFENDANT required PLAINTIFF and the CALIFORNIA CLASS Members to
28 maintain cordless communication devices on them during rest periods in order to receive and

1 respond to work-related communications. PLAINTIFF and other CALIFORNIA CLASS
2 Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous
3 work schedules and DEFENDANT's inadequate staffing, PLAINTIFF and other CALIFORNIA
4 CLASS Members were from time to time denied their proper rest periods by DEFENDANT and
5 DEFENDANT's managers.

6 **C. Unreimbursed Business Expenses**

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

18 22. In the course of their employment, DEFENDANT required PLAINTIFF and other
19 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell
20 phones and the maintenance of their work uniform as a result of and in furtherance of their job
21 duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required to
22 use their personal cell phones in order to perform work related tasks. PLAINTIFF and other
23 CALIFORNIA CLASS Members were required to clean and maintain their work uniforms.
24 However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA
25 CLASS Members for the use of their personal cell phones and the maintenance of their work
26 uniform. As a result, in the course of their employment with DEFENDANT, the PLAINTIFF and
27 other CALIFORNIA CLASS Members incurred unreimbursed business expenses that included,
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1 but were not limited to, costs related to the use of their personal cell phones and the maintenance
2 of their work uniform all on behalf of and for the benefit of DEFENDANT.

3 **D. Wage Statement Violations**

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

12 24. From time to time during the CLASS PERIOD, when PLAINTIFF and other
13 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
14 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS
15 also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
16 accurate wage statements which failed to show the complete requirements under California Labor
17 Code sections 226(a)(1)-(9), including but not limited to, all deductions, the total hours worked
18 and all applicable hourly rates in effect during the pay period and the corresponding amount of
19 time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
20 periods.

21 25. Further, DEFENDANT from time to time issued wage statements to PLAINTIFF
22 and other CALIFORNIA CLASS Members that failed to include applicable hourly rates in effect
23 during the pay period and the corresponding number of hours worked at each hourly rate by the
24 employee, in violation of Cal. Lab. Code § 226(a)(9).

25 26. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
26 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
27 Cal. Lab. Code § 226(a)(1)-(9).

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

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

6 28. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
7 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
8 for all hours worked.

9 29. During the CLASS PERIOD, from time-to-time DEFENDANT required
10 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
11 work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS having to
12 work while off-the-clock. DEFENDANT directed and directly benefited from the
13 undercompensated off-the-clock work performed by PLAINTIFF and the other CALIFORNIA
14 CLASS Members.

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

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

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

24 33. DEFENDANT's policies and practices deprived PLAINTIFF and the other
25 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
26 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
27 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
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1 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime
2 pay.

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

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

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

13 36. From time to time during the CLASS PERIOD, DEFENDANT failed and
14 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
15 Members for their overtime and double time hours worked, meal and rest period premiums, and
16 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
17 forfeited wages due to them for working overtime without compensation at the correct overtime
18 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
19 DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at
20 the correct rate for all overtime and double time worked, meal and rest period premiums, and
21 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT's business
22 records.

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

27 38. The second component of PLAINTIFF's and other CALIFORNIA CLASS
28 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid

1 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
2 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
3 basis with bonus compensation when the employees met the various performance goals set by
4 DEFENDANTS.

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

23 40. In violation of the applicable sections of the California Labor Code and the
24 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
25 matter of company policy, practice, and procedure, intentionally and knowingly failed to
26 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
27 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
28 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment

1 of the correct overtime and double time compensation, meal and rest period premiums, and sick
2 pay as required by California law which allowed DEFENDANT to illegally profit and gain an
3 unfair advantage over competitors who complied with the law. To the extent equitable tolling
4 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the
5 CLASS PERIOD should be adjusted accordingly.

6 **G. Violations for Untimely Payment of Wages**

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

12 42. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
13 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant
14 to Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall
15 become due and payable not later than 72 hours thereafter, unless the employee has given 72
16 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
17 or her wages at the time of quitting.” PLAINTIFF and the CALIFORNIA CLASS Members
18 were, from time to time, not timely provided the wages earned and unpaid at the time of their
19 discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

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

23 **H. Unlawful Deductions**

24 44. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
25 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
26 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
27 DEFENDANTS violated Labor Code § 221.

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1 **I. Timekeeping Manipulation**

2 45. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an
3 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
4 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
5 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
6 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
7 unilaterally alter the time recorded in DEFENDANT’S timekeeping system for PLAINTIFF and
8 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
9 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
10 missed rest breaks.

11 46. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
12 time-to-time, forfeited time worked by working without their time being accurately recorded and
13 without compensation at the applicable pay rates.

14 47. The mutability of the timekeeping system also allowed DEFENDANT to alter
15 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANT’S
16 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
17 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
18 were not at all times provided an off-duty meal break. This practice is a direct result of
19 DEFENDANT’S uniform policy and practice of denying employees uninterrupted thirty (30)
20 minute off-duty meal breaks each day or otherwise compensating them for missed meal breaks.

21 48. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
22 forfeited wages due to them for all hours worked at DEFENDANT’S direction, control and
23 benefit for the time the timekeeping system was inoperable. DEFENDANT’S uniform policy
24 and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for
25 all hours worked in accordance with applicable law is evidenced by DEFENDANT’S business
26 records.

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1 **J. Unlawful Rounding Practices**

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

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

20 **K. Sick Pay Violations**

21 51. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after
22 July 1, 2015, works in California for the same employer for 30 or more days within a year from the
23 commencement of employment is entitled to paid sick days as specified in this section." Further,
24 Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to
25 time, DEFENDANT failed to have a policy or practice in place that provided PLAINTIFF and other
26 members of the CALIFORNIA CLASS with sick days and/or paid sick leave.

27 52. California Labor Code Section 246(i) requires an employer to furnish its employees
28 with written wage statements setting forth the amount of paid sick leave available. From time to

1 time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF and other
2 members of the CALIFORNIA CLASS with wage statements setting forth the amount of paid sick
3 leave available.

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

22 **CLASS ACTION ALLEGATIONS**

23 54. PLAINTIFF bring this Class Action on behalf of himself, and a California class
24 defined as all persons who are or previously were employed by DEFENDANT in California and
25 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
26 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
27 by the Court (the "CLASS PERIOD").

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

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

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

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

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

15 58. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
16 a result of DEFENDANT's conduct and actions alleged herein.

17 59. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
18 PLAINTIFF have the same interests as the other members of the class.

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

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

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

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

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

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

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

66. 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)

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

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

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

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

11 70. By the conduct alleged herein, DEFENDANT has engaged and continues to
12 engage in a business practice which violates California law, including but not limited to, the
13 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
14 including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
15 1198, and 2802, for which this Court should issue declaratory and other equitable relief pursuant
16 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
17 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

23 72. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
24 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
25 mandated meal and rest periods and the required amount of compensation for missed meal and
26 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
27 necessary business expenses incurred, due to a systematic business practice that cannot be
28 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission

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

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

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

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

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

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

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

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

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

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

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

19 **SECOND CAUSE OF ACTION**

20 **Failure To Pay Minimum Wages**

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

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

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

26 83. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
27 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
28

1 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
2 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

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

15 88. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
16 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
17 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
18 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

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

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

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

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

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

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

7 **THIRD CAUSE OF ACTION**

8 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 109. DEFENDANT knew or should have known that PLAINTIFF and the other
17 members of the CALIFORNIA CLASS were undercompensated for their time worked.
18 DEFENDANT systematically elected, either through intentional malfeasance or gross
19 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
20 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF
21 and the other members of the CALIFORNIA CLASS the correct overtime wages for their
22 overtime worked.

23 110. In performing the acts and practices herein alleged in violation of California labor
24 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
25 and provide them with the requisite compensation, DEFENDANT acted and continues to act
26 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
27 CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the
28 consequences to them, and with the despicable intent of depriving them of their property and legal

1 rights, and otherwise causing them injury in order to increase company profits at the expense of
2 these employees.

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

13 **FOURTH CAUSE OF ACTION**

14 **Failure To Provide Required Meal Periods**

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

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

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

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

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

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

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

14 **FIFTH CAUSE OF ACTION**

15 **Failure To Provide Required Rest Periods**

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

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

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

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

1 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
2 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate
3 PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the
4 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
5 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
6 periods is evidenced by DEFENDANT's business records.

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

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

15 **SIXTH CAUSE OF ACTION**

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

17 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

28 122. From time to time during the CLASS PERIOD, DEFENDANT 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 DEFENDANT's

benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which included, but were not limited to, personal expenses incurred for the use of their personal cell phone and the maintenance of their work uniform, all on behalf of and for the benefit of DEFENDANT. Specifically, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to use their personal cell phone and the maintenance of their work uniform to execute their essential job duties on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting from the use of their personal cell phone and the maintenance of their work uniform for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

SEVENTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

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

124. 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.

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

- a. Gross wages earned,
- b. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

126. When DEFENDANT did not accurately record PLAINTIFF'S 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 the complete requirements under California Labor Code sections 226(a)(1)-(9), including but not limited to, 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.

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127. Further, DEFENDANT from time to time issued wage statements to PLAINTIFF and other CALIFORNIA CLASS Members that failed to include applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Cal. Lab. Code § 226(a)(9).

128. 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(a)(1)-(9).

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

EIGHTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code § 203)

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

130. 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.

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

As used in this article:

/ / /

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

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

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

11 If an employee not having a written contract for a definite period quits his or her
12 employment, his or her wages shall become due and payable not later than 72 hours
13 thereafter, unless the employee has given 72 hours previous notice of his or her intention
14 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
15 Notwithstanding any other provision of law, an employee who quits without providing a
16 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
17 designates a mailing address. The date of the mailing shall constitute the date of payment
18 for purposes of the requirement to provide payment within 72 hours of the notice of
19 quitting.

20 134. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS
21 Members' employment contract.

22 135. Cal. Lab. Code § 203 provides:

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

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

137. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand 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.

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NINTH CAUSE OF ACTION
VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT
(Cal. Lab. Code §§2698 et seq.)
(Alleged by PLAINTIFF against all Defendants)

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

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

140. 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 individual PAGA and Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by Defendants in California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of February 5, 2023, until the present (the "PAGA PERIOD").

141. On February 5, 2024, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to Section

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

3 142. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANTS (a) failed to pay PLAINTIFF and AGGRIEVED
5 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and
6 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to pay PLAINTIFF
7 and AGGRIEVED EMPLOYEES at the correct regular rate of pay, (d) failed to pay PLAINTIFF
8 and AGGRIEVED EMPLOYEES for all time worked, and (e) failed to timely pay wages, all in
9 violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not
10 limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3,
11 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5,
12 1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to
13 statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties
14 as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the
15 State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
16 EMPLOYEES.

17 143. For all provisions of the Labor Code for which civil penalty is not specifically
18 provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100)
19 for each AGGRIEVED EMPLOYEE, including PLAINTIFF, per pay period for the initial
20 violation and two hundred dollars (\$200) for each AGGRIEVED EMPLOYEE, including
21 PLAINTIFF, per pay period for each subsequent violation. PLAINTIFF and the AGGRIEVED
22 EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with
23 their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

24 144. To the extent that any of the conduct and violations alleged herein did not affect
25 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
26 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
27 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
28 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor

1 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
2 committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).).

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and
5 severally, as follows:

6 1. On behalf of the CALIFORNIA CLASS:

- 7 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
8 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
9 b. An order temporarily, preliminarily and permanently enjoining and restraining
10 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
11 c. An order requiring DEFENDANT to pay all overtime wages and all sums
12 unlawfully withheld from compensation due to PLAINTIFF and the other members
13 of the CALIFORNIA CLASS; and
14 d. Restitutionary disgorgement of DEFENDANT’s ill-gotten gains into a fluid fund
15 for restitution of the sums incidental to DEFENDANT’s violations due to
16 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

17 2. On behalf of the CALIFORNIA CLASS:

- 18 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
19 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
20 to Cal. Code of Civ. Proc. § 382;
21 b. Compensatory damages, according to proof at trial, including compensatory
22 damages for overtime compensation due to PLAINTIFF and the other members of
23 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
24 thereon at the statutory rate;
25 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
26 the applicable IWC Wage Order;
27 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
28 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.
- g. For all exemplary damages, according to proof, which were sustained as a result of DEFENDANT's conduct.
- h. An award of interest, including prejudgment interest at the legal rate.
- i. Such other and further relief as the Court deems just and equitable.
- j. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

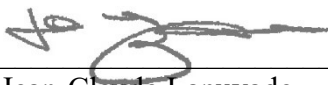
3. On behalf of the PLAINTIFF, the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004;

4. On all claims:

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

DATED: April 11, 2024

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade
Attorney for PLAINTIFF

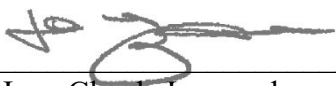
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DEMAND FOR A JURY TRIAL

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

DATED: April 11, 2024

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade
Attorney for PLAINTIFF

EXHIBIT 1

February 5, 2024

Via Online Filing to LWDA and Certified/Electronic Mail to Defendants

Labor and Workforce Development Agency

Online Filing

**HILTON GRAND VACATIONS
COMPANY, LLC**

c/o CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive
Sacramento, CA 95833

***Via Certified U.S. Mail with Return Receipt
No. 9589 0710 5270 0951 5264 65***

**HILTON RESORTS CORPORATION dba
HILTON GRAND VACATIONS**

c/o CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive
Sacramento, CA 95833

***Via Certified U.S. Mail with Return Receipt
No. 9589 0710 5270 0951 5264 72***

**HILTON GRAND VACATIONS CLUB,
LLC**

c/o CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive
Sacramento, CA 95833

***Via Certified U.S. Mail with Return Receipt
No. 9589 0710 5270 0951 5286 74***

**HILTON GRAND VACATIONS CLUB,
LLC**

c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

***Via Certified U.S. Mail with Return Receipt
No. 9589 0710 5270 0951 5286 81***

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 SIXTO ALEGRIA FERNANDEZ ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant HILTON GRAND VACATIONS COMPANY, LLC ("Defendant Hilton Grand Vacations"), Defendant HILTON RESORTS CORPORATION dba HILTON GRAND VACATION ("Defendant Hilton Resorts"), and Defendant HILTON GRAND VACATIONS CLUB, LLC ("Defendant Hilton Grands Vacations Club") (hereinafter collectively hereinafter "Defendants"). Plaintiff was employed by Defendants from March of 2023 to June of 2023, 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 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.

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in dark ink, appearing to read 'Jean-Claude Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
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ZAKAY LAW GROUP, APLC

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Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

SIXTO ALEGRIA FERNANDEZ, an
individual, on behalf of himself, and on behalf
of all persons similarly situated,

Plaintiffs,

v.

HILTON GRAND VACATIONS COMPANY,
LLC, a Delaware limited liability company,
HILTON RESORTS CORPORATION dba
HILTON GRAND VACATIONS, a Delaware
stock corporation, HILTON GRAND
VACATIONS CLUB, LLC, a Delaware 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 REIMBURSE EMPLOYEES
2 FOR REQUIRED EXPENSES IN
3 VIOLATION OF CAL. LAB. CODE § 2802;
4 7) FAILURE TO PROVIDE ACCURATE
5 ITEMIZED STATEMENTS IN
6 VIOLATION OF CAL. LAB. CODE § 226;
7 8) FAILURE TO PROVIDE WAGES WHEN
8 DUE IN VIOLATION OF CAL. LAB.
9 CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

14 1. Defendant HILTON GRAND VACATIONS COMPANY, LLC (“DEFENDANT
15 HILTON GRAND VACATIONS COMPANY”) is a Delaware limited liability company that at
16 all relevant times mentioned herein conducted and continues to conduct substantial and regular
17 business throughout California.

18 2. Defendant HILTON RESORTS CORPORATION dba HILTON GRAND
19 VACATIONS (“DEFENDANT HILTON RESORTS”) is a Delaware stock company that at all
20 relevant times mentioned herein conducted and continues to conduct substantial and regular
21 business throughout California.

22 3. Defendant HILTON GRAND VACATIONS CLUB, LLC (“DEFENDANT
23 HILTON GRAND VACATIONS CLUB”) is a Delaware limited liability company that at all
24 relevant times mentioned herein conducted and continues to conduct substantial and regular
25 business throughout California.

26 4. Defendant HILTON GRAND VACATIONS COMPANY, Defendant HILTON
27 RESORTS CORPORATION, and Defendant HILTON GRAND VACATIONS CLUB were the
28 joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the

1 company PLAINTIFF performed work for respectively and are therefore jointly responsible as
2 employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

3 5. DEFENDANTS own and operate hotels throughout the world, including hotels in
4 the state of California, including the county of Riverside, where PLAINTIFF worked.

5 6. PLAINTIFF was employed by DEFENDANTS in California from March 2023 to
6 October 2023 as a non-exempt employee, paid an hourly basis, and entitled to the legally required
7 meal and rest periods and payment of minimum and overtime wages due for all time worked.

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

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

25 9. The true names and capacities, whether individual, corporate, subsidiary,
26 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
27 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious
28 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this

1 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
2 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
3 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
4 inclusive, are responsible in some manner for one or more of the events and happenings that
5 proximately caused the injuries and damages hereinafter alleged.

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

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

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

25 13. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
26 unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain
27 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

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

JURISDICTION AND VENUE

15. 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 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

16. 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

17. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANT as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF and other members of the CALIFORNIA CLASS 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 rest premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay

1 periods and the corresponding amount of time worked at each hourly rate. DEFENDANT's
2 uniform policies and practices are intended to purposefully avoid the accurate and full payment
3 for all time worked as required by California law which allows DEFENDANT to illegally profit
4 and gain an unfair advantage over competitors who comply with the law. To the extent equitable
5 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CLASS
6 PERIOD should be adjusted accordingly.

7 **A. Meal Period Violations**

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

22 19. From time to time during the CLASS PERIOD, as a result of their rigorous work
23 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
24 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
25 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
26 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
27 more than five (5) hours during some shifts without receiving a meal break. Further,
28 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second

1 off-duty meal period for some workdays in which these employees are required by DEFENDANT
2 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other
3 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed “on-
4 duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other
5 CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call.
6 Further, DEFENDANT required PLAINTIFF and the CALIFORNIA CLASS Members to
7 maintain cordless communication devices on them during meal periods in order to receive and
8 respond to work-related communications. DEFENDANT’s failure to provide PLAINTIFF and
9 the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
10 DEFENDANT’s business records. PLAINTIFF and other members of the CALIFORNIA CLASS
11 therefore forfeit meal breaks without additional compensation and in accordance with
12 DEFENDANT’s strict corporate policy and practice.

13 **B. Rest Period Violations**

14 20. From time to time during the CLASS PERIOD, PLAINTIFF and other
15 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
16 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
17 DEFENDANT’s inadequate staffing. Further, for the same reasons, these employees were denied
18 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
19 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
20 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
21 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
22 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
23 CLASS Members were, from time to time, required to remain on premises, on duty and/or on call.
24 Further, DEFENDANT required PLAINTIFF and the CALIFORNIA CLASS Members to
25 maintain cordless communication devices on them during rest periods in order to receive and
26 respond to work-related communications. PLAINTIFF and other CALIFORNIA CLASS
27 Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous
28 work schedules and DEFENDANT’s inadequate staffing, PLAINTIFF and other CALIFORNIA

1 CLASS Members were from time to time denied their proper rest periods by DEFENDANT and
2 DEFENDANT's managers.

3 **C. Unreimbursed Business Expenses**

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

15 22. In the course of their employment, DEFENDANT required PLAINTIFF and other
16 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell
17 phones and the maintenance of their work uniform as a result of and in furtherance of their job
18 duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required to
19 use their personal cell phones in order to perform work related tasks. PLAINTIFF and other
20 CALIFORNIA CLASS Members were required to clean and maintain their work uniforms.
21 However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA
22 CLASS Members for the use of their personal cell phones and the maintenance of their work
23 uniform. As a result, in the course of their employment with DEFENDANT, the PLAINTIFF and
24 other CALIFORNIA CLASS Members incurred unreimbursed business expenses that included,
25 but were not limited to, costs related to the use of their personal cell phones and the maintenance
26 of their work uniform all on behalf of and for the benefit of DEFENDANT.

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D. Wage Statement Violations

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

24. 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 the complete requirements under California Labor Code sections 226(a)(1)-(9), including but not limited to, 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.

25. Further, DEFENDANT from time to time issued wage statements to PLAINTIFF and other CALIFORNIA CLASS Members that failed to include applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Cal. Lab. Code § 226(a)(9).

26. 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(a)(1)-(9).

27. As a result, DEFENDANT issued PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,

1 DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional
2 payroll error due to clerical or inadvertent mistake.

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

4 28. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
5 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
6 for all hours worked.

7 29. During the CLASS PERIOD, from time-to-time DEFENDANT required
8 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
9 work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS having to
10 work while off-the-clock. DEFENDANT directed and directly benefited from the
11 undercompensated off-the-clock work performed by PLAINTIFF and the other CALIFORNIA
12 CLASS Members.

13 30. DEFENDANT controlled the work schedules, duties, and protocols, applications,
14 assignments, and employment conditions of PLAINTIFF and the other members of the
15 CALIFORNIA CLASS.

16 31. DEFENDANT was able to track the amount of time PLAINTIFF and the other
17 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
18 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
19 wages earned and owed for all the work they performed.

20 32. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
21 exempt employees, subject to the requirements of the California Labor Code.

22 33. DEFENDANT's policies and practices deprived PLAINTIFF and the other
23 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
24 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
25 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
26 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime
27 pay.

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34. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

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

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

36. From time to time during the CLASS PERIOD, DEFENDANT failed and continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS Members for their overtime and double time hours worked, meal and rest period premiums, and redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members forfeited wages due to them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay rates. DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at the correct rate for all overtime and double time worked, meal and rest period premiums, and redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT's business records.

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

38. The second component of PLAINTIFF's and other CALIFORNIA CLASS Members' compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly

1 basis with bonus compensation when the employees met the various performance goals set by
2 DEFENDANTS.

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

21 40. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
23 matter of company policy, practice, and procedure, intentionally and knowingly failed to
24 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
25 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
26 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
27 of the correct overtime and double time compensation, meal and rest period premiums, and sick
28 pay as required by California law which allowed DEFENDANT to illegally profit and gain an

1 unfair advantage over competitors who complied with the law. To the extent equitable tolling
2 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the
3 CLASS PERIOD should be adjusted accordingly.

4 **G. Violations for Untimely Payment of Wages**

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

10 42. Pursuant to Cal. Lab. Code § 201, “If an employer discharges an employee, the
11 wages earned and unpaid at the time of discharge are due and payable immediately.” Pursuant
12 to Cal. Lab. Code § 202, if an employee quits his or her employment, “his or her wages shall
13 become due and payable not later than 72 hours thereafter, unless the employee has given 72
14 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
15 or her wages at the time of quitting.” PLAINTIFF and the CALIFORNIA CLASS Members
16 were, from time to time, not timely provided the wages earned and unpaid at the time of their
17 discharge and/or at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

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

21 **H. Unlawful Deductions**

22 44. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
23 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
24 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
25 DEFENDANTS violated Labor Code § 221.

26 **I. Timekeeping Manipulation**

27 45. During the CLASS PERIOD, DEFENDANT, from time-to-time, did not have an
28 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of

1 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
2 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
3 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
4 unilaterally alter the time recorded in DEFENDANT'S timekeeping system for PLAINTIFF and
5 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
6 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
7 missed rest breaks.

8 46. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
9 time-to-time, forfeited time worked by working without their time being accurately recorded and
10 without compensation at the applicable pay rates.

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

18 48. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
19 forfeited wages due to them for all hours worked at DEFENDANT'S direction, control and
20 benefit for the time the timekeeping system was inoperable. DEFENDANT'S uniform policy
21 and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for
22 all hours worked in accordance with applicable law is evidenced by DEFENDANT'S business
23 records.

24 **J. Unlawful Rounding Practices**

25 49. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
26 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
27 CALIFORNIA CLASS Members for the actual time these employees worked each day,
28 including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding

1 policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
2 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
3 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
4 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
5 these employees for all their time worked, including the applicable overtime compensation for
6 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from
7 time to time, forfeited compensation for their time worked by working without their time being
8 accurately recorded and without compensation at the applicable overtime rates.

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

15 **K. Sick Pay Violations**

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

22 52. California Labor Code Section 246(i) requires an employer to furnish its employees
23 with written wage statements setting forth the amount of paid sick leave available. From time to
24 time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF and other
25 members of the CALIFORNIA CLASS with wage statements setting forth the amount of paid sick
26 leave available.

27 53. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
28 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.

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

17 **CLASS ACTION ALLEGATIONS**

18 54. PLAINTIFF bring this Class Action on behalf of himself, and a California class
19 defined as all persons who are or previously were employed by DEFENDANT in California and
20 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
21 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
22 by the Court (the "CLASS PERIOD").

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

1 56. The members of the class are so numerous that joinder of all class members is
2 impractical.

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

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

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- 1 i. Whether DEFENDANT committed an act of unfair competition by systematically
2 failing to record all meal and rest breaks missed by PLAINTIFF and other
3 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
4 of this work, required employees to perform this work and permits or suffers to
5 permit this work;
- 6 j. Whether DEFENDANT committed an act of unfair competition in violation of the
7 UCL, by failing to provide the PLAINTIFF and the other members of the
8 CALIFORNIA CLASS with the legally required meal and rest periods.

9 58. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
10 a result of DEFENDANT's conduct and actions alleged herein.

11 59. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
12 PLAINTIFF have the same interests as the other members of the class.

13 60. PLAINTIFF will fairly and adequately represent and protect the interests of the
14 CALIFORNIA CLASS Members.

15 61. PLAINTIFF retained able class counsel with extensive experience in class action
16 litigation.

17 62. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
18 interest of the other CALIFORNIA CLASS Members.

19 63. There is a strong community of interest among PLAINTIFF and the members of
20 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
21 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
22 sustained.

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

26 65. A class action is superior to other available methods for the fair and efficient
27 adjudication of this controversy because joinder of all class members is impractical. Moreover,
28 since the damages suffered by individual members of the class may be relatively small, the

1 expense and burden of individual litigation makes it practically impossible for the members of the
2 class individually to redress the wrongs done to them. Without class certification and
3 determination of declaratory, injunctive, statutory, and other legal questions within the class
4 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
5 create the risk of:

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

13 66. Class treatment provides manageable judicial treatment calculated to bring an
14 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
15 the conduct of DEFENDANT.

16 **FIRST CAUSE OF ACTION**

17 **Unlawful Business Practices**

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

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

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

23 68. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
24 Code § 17021.

25 69. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
26 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
27 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
28 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).

70. By the conduct alleged herein, DEFENDANT has engaged and continues 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, 226.7, 246, 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.

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

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

73. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with
2 DEFENDANT.

3 74. By the conduct alleged herein, DEFENDANT's practices were also unfair and
4 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
5 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
6 required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

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

26 79. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
27 and do, seek such relief as may be necessary to restore to them the money and property which
28 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the

1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
2 business practices, including earned but unpaid wages for all time worked.

3 80. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
4 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
5 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
6 engaging in any unlawful and unfair business practices in the future.

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

14 **SECOND CAUSE OF ACTION**

15 **Failure To Pay Minimum Wages**

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

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

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

21 83. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
22 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
23 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
24 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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1 85. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
2 commission is the minimum wage to be paid to employees, and the payment of a less wage than
3 the minimum so fixed is unlawful.

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

6 87. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
7 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
8 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
9 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
10 CALIFORNIA CLASS.

11 88. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
12 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
13 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
14 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

21 90. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
22 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
23 minimum wage compensation for their time worked for DEFENDANT.

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

27 92. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
28 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true

1 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
2 suffered and will continue to suffer an economic injury in amounts which are presently unknown
3 to them, and which will be ascertained according to proof at trial.

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

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

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

3 **THIRD CAUSE OF ACTION**

4 **Failure To Pay Overtime Compensation**

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

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

7 96. 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 97. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
11 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
12 Welfare Commission requirements for DEFENDANT's failure to pay these employees for all
13 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
14 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

24 101. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
25 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
26 they worked, including overtime work.

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

1 implementing a uniform policy and practice that failed to accurately record overtime worked by
2 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
3 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
4 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
5 (12) hours in a workday, and/or forty (40) hours in any workweek.

6 103. In committing these violations of the California Labor Code, DEFENDANT
7 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
8 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
9 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
10 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
11 regulations.

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

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

23 106. During the CLASS PERIOD, PLAINTIFF and the other members of the
24 CALIFORNIA CLASS were paid less for overtime worked than they were entitled to, constituting
25 a failure to pay all earned wages.

26 107. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
27 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
28 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even

1 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
2 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANT
3 failed to accurately record and pay as evidenced by DEFENDANT's business records and
4 witnessed by employees.

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

10 109. DEFENDANT knew or should have known that PLAINTIFF and the other
11 members of the CALIFORNIA CLASS were undercompensated for their time worked.
12 DEFENDANT systematically elected, either through intentional malfeasance or gross
13 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
14 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF
15 and the other members of the CALIFORNIA CLASS the correct overtime wages for their
16 overtime worked.

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

25 111. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
26 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
27 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
28 California Labor Code and/or other applicable statutes. To the extent overtime compensation is

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

7 **FOURTH CAUSE OF ACTION**

8 **Failure To Provide Required Meal Periods**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

14 113. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
15 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
16 required by the applicable Wage Order and Labor Code. The nature of the work performed by
17 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
18 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
19 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
20 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
21 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
22 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
23 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
24 Members with a second off-duty meal period in some workdays in which DEFENDANT required
25 these employees to work ten (10) hours of work. As a result, PLAINTIFF and other members of
26 the CALIFORNIA CLASS forfeited meal breaks without additional compensation and in
27 accordance with DEFENDANT's strict corporate policy and practice.

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114. DEFENDANT 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 meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

115. 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)

116. 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.

117. 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 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT 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, DEFENDANT's failure to provide

1 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
2 periods is evidenced by DEFENDANT's business records.

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

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

11 **SIXTH CAUSE OF ACTION**

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

13 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

22 122. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
23 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
24 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
25 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members
26 for expenses which included, but were not limited to, personal expenses incurred for the use of
27 their personal cell phone and the maintenance of their work uniform, all on behalf of and for the
28 benefit of DEFENDANT. Specifically, DEFENDANT required PLAINTIFF and other

1 CALIFORNIA CLASS Members to use their personal cell phone and the maintenance of their
2 work uniform to execute their essential job duties on behalf of DEFENDANT. DEFENDANT's
3 uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA
4 CLASS members for expenses resulting from the use of their personal cell phone and the
5 maintenance of their work uniform for DEFENDANT within the course and scope of their
6 employment for DEFENDANT. These expenses were necessary to complete their principal job
7 duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
8 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
9 CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF
10 and the CALIFORNIA CLASS members for these expenses as an employer is required to do
11 under the laws and regulations of California.

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

16 **SEVENTH CAUSE OF ACTION**

17 **Failure To Provide Accurate Itemized Statements**

18 **(Cal. Lab. Code § 226)**

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

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

23 125. Cal. Labor Code § 226 provides that an employer must furnish employees with an
24 "accurate itemized" statement in writing showing:

- 25 a. Gross wages earned,
- 26 b. (2) total hours worked by the employee, except for any employee whose
- 27 compensation is solely based on a salary and who is exempt from payment of
- 28

overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,

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

126. When DEFENDANT did not accurately record PLAINTIFF'S 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 the complete requirements under California Labor Code sections 226(a)(1)-(9), including but not limited to, 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.

127. Further, DEFENDANT from time to time issued wage statements to PLAINTIFF and other CALIFORNIA CLASS Members that failed to include applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Cal. Lab. Code § 226(a)(9).

128. 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(a)(1)-(9).

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

EIGHTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code § 203)

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

130. 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.

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

As used in this article:

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

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

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

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

134. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS Members' employment contract.

135. Cal. Lab. Code § 203 provides:

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

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

137. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand 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.

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

a. That the Court certify the First Cause of Action asserted by the CALIFORNIA

1 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

2 b. An order temporarily, preliminarily and permanently enjoining and restraining
3 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

4 c. An order requiring DEFENDANT to pay all overtime wages and all sums
5 unlawfully withheld from compensation due to PLAINTIFF and the other members
6 of the CALIFORNIA CLASS; and

7 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
8 for restitution of the sums incidental to DEFENDANT's violations due to
9 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

10 2. On behalf of the CALIFORNIA CLASS:

11 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
12 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
13 to Cal. Code of Civ. Proc. § 382;

14 b. Compensatory damages, according to proof at trial, including compensatory
15 damages for overtime compensation due to PLAINTIFF and the other members of
16 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
17 thereon at the statutory rate;

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

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

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

28 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.

g. For all exemplary damages, according to proof, which were sustained as a result of
DEFENDANT's conduct.

h. An award of interest, including prejudgment interest at the legal rate.

i. Such other and further relief as the Court deems just and equitable.

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

3. On all claims:

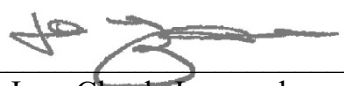
a. An award of interest, including prejudgment interest at the legal rate;

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, and/or § 1194.

DATED: February __, 2024

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade
Attorney for PLAINTIFF

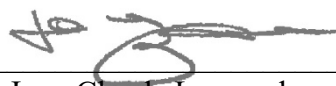
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DEMAND FOR A JURY TRIAL

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

DATED: February __, 2024

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade
Attorney for PLAINTIFF