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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MICHAEL MCGEE, WAEL KANAFANI,
DAVID URIBE, ZACHARY MCGORDON,
and IMMANUEL PASCUAL, individuals, on
behalf of themselves, and on behalf of all
persons similarly situated,

Plaintiffs,

v.

MITRA VI, LLC, an Arizona limited liability
company; DENALI MIDCO 2 LLC, a Delaware
limited liability company; and DOES 1-50,
Inclusive,

Defendants.

Case No: 37-2022-00044660-CU-OE-CTL

**FIRST AMENDED 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 WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203;
7 8) FAILURE TO PROVIDE ACCURATE
8 ITEMIZED STATEMENTS IN
9 VIOLATION OF CAL. LAB. CODE § 226;
10 9) VIOLATION OF THE PRIVATE
11 ATTORNEYS GENERAL ACT [LABOR
12 CODE §§ 2698 ET SEQ.].

13 **DEMAND FOR A JURY TRIAL**

14 PLAINTIFFS MICHAEL MCGEE, DAVID URIBE, Wael Kanafani, Zachary
15 MCGORDON, and IMMANUEL PASCUAL (“PLAINTIFFS”), individuals, on behalf of
16 themselves and all other similarly situated current and former employees, allege on information
17 and belief, except for their own acts and knowledge which are based on personal knowledge, the
18 following:

19 **PRELIMINARY ALLEGATIONS**

20 1. Defendant MITRA VI, LLC (“Defendant Mitra”) is an Arizona limited liability
21 company that at all relevant times mentioned herein conducted and continues to conduct
22 substantial and regular business throughout California.

23 2. Defendant DENALI MIDCO 2 LLC (“Defendant Denali”) is a Delaware limited
24 liability company that at all relevant times mentioned herein conducted and continues to conduct
25 substantial and regular business throughout California.

26 3. Defendant Mitra and Defendant Denali were the joint employers of PLAINTIFF
27 as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed
28 work for respectively and are therefore jointly responsible as employers for the conduct alleged
herein as “DEFENDANTS” and/or “DEFENDANT.”

4. DEFENDANTS own, operate, and/or manage carwashes with locations
throughout the state of California, including in the county of San Diego, where PLAINTIFFS
worked.

1 5. PLAINTIFF MICHAEL MCGEE (“Plaintiff McGee”) has been employed by
2 DEFENDANT in California since April of 2017 as a non-exempt employee, paid in part an hourly
3 basis and non-discretionary bonuses, and entitled to the legally required meal and rest periods and
4 payment of minimum and overtime wages due for all time worked.

5 6. PLAINTIFF WAEL KANAFANI (“Plaintiff Kanafani”) has been employed by
6 DEFENDANT in California since October of 2017, as a non-exempt employee, paid in part an
7 hourly basis and non-discretionary bonuses, and entitled to the legally required meal and rest
8 periods and payment of minimum and overtime wages due for all time worked.

9 7. PLAINTIFF DAVID URIBE (“Plaintiff Uribe”) was employed by DEFENDANT
10 in California from November of 2016 to July of 2022, and was at times classified by
11 DEFENDANT as a non-exempt employee, paid in part on an hourly basis and non-discretionary
12 bonuses, and entitled to the legally required meal and rest periods and payment of minimum and
13 overtime wages due for all time worked. Plaintiff Uribe also worked for DEFENDANT at times
14 as a misclassified exempt employee.

15 8. PLAINTIFF ZACHARY MCGORDON (“Plaintiff McGordon”) was employed
16 by DEFENDANT in California from 2019 to the present and was at all times classified by
17 DEFENDANT as a non-exempt employee, paid on an hourly basis and non-discretionary
18 bonuses, and entitled to the legally required meal and rest periods and payment of minimum and
19 overtime wages due for all time worked.

20 9. PLAINTIFF IMMANUEL PASCUAL (“Plaintiff Pascual”) was employed by
21 DEFENDANT in California from March of 2017 to February of 2022, and was at times classified
22 by DEFENDANT as a non-exempt employee, paid in part on an hourly basis and non-
23 discretionary bonuses, and entitled to the legally required meal and rest periods and payment of
24 minimum and overtime wages due for all time worked. Plaintiff Pascual also worked for
25 DEFENDANT at times as a misclassified exempt employee.

26 10. PLAINTIFFS bring this Class Action on behalf of themselves and on behalf of two
27 classes of employees that worked for Defendant Mitra and/or Defendant Denali in California at
28 any time beginning four (4) years prior to the filing of the original Complaint and ending on the

1 date as determined by the Court (“CLASS PERIOD”). The members of the classes are so
2 numerous that joinder of all class members is impractical. PLAINTIFF reserves the right to
3 amend the following class definitions before the Court determines whether class certification is
4 appropriate, or thereafter upon leave of Court:

5 a. **Non-Exempt Class**: All of Defendant Mitra’s and/or Defendant Denali’s
6 current and former non-exempt employees, paid in whole or in part on an
7 hourly basis, employed in California during the CLASS PERIOD (“Non-
8 Exempt Class”).

9 b. **Misclassification Class**: All of Defendant Mitra’s and/or Defendant
10 Denali’s current and former exempt employees in California during the
11 CLASS PERIOD (“Misclassification Class”).

12 c. The Non-Exempt Class and the Misclassification Class are collectively referred to
13 herein as the “CALIFORNIA CLASS”.

14 11. The amount in controversy for the aggregate claim of the CALIFORNIA CLASS
15 Members is under five million dollars (\$5,000,000.00).

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

27 13. The true names and capacities, whether individual, corporate, subsidiary,
28 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are

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

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

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

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

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17. DEFENDANT's uniform policies and practices alleged herein were unlawful, unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain wages due to PLAINTIFFS and other members of the CALIFORNIA CLASS.

18. PLAINTIFFS and other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFFS and other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

JURISDICTION AND VENUE

19. 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 PLAINTIFFS and similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

20. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs 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

21. 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 PLAINTIFFS and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFFS and other members of the CALIFORNIA CLASS for off-the-clock work, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFFS and other members of the CALIFORNIA CLASS meal rest premiums at the regular rate, failed to reimburse

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

24 23. From time to time during the CLASS PERIOD, as a result of their rigorous work
25 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFFS and other Non-
26 Exempt Class Members are from time to time unable to take thirty (30) minute off duty meal
27 breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and other Non-
28 Exempt Class Members are required to perform work as ordered by DEFENDANT for more than

1 five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT fails to
2 provide PLAINTIFFS and Non-Exempt Class Members with a second off-duty meal period for
3 some workdays in which these employees are required by DEFENDANT to work ten (10) hours
4 of work. The nature of the work performed by PLAINTIFFS and other Non-Exempt Class
5 Members does not qualify for the limited and narrowly construed “on-duty” meal period
6 exception. When they were provided with meal periods, PLAINTIFFS and other Non-Exempt
7 Class Members were, from time to time, required to remain on duty and on call. DEFENDANT’s
8 failure to provide PLAINTIFFS and the Non-Exempt Class Members with legally required meal
9 breaks is evidenced by DEFENDANT’s business records. PLAINTIFFS and other members of
10 the Non-Exempt Class therefore forfeit meal breaks without additional compensation and in
11 accordance with DEFENDANT’s strict corporate policy and practice.

12 **B. Rest Period Violations**

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

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1 **C. Unreimbursed Business Expenses**

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

13 26. In the course of their employment, DEFENDANT required PLAINTIFFS and
14 other Non-Exempt Class Members to use their personal cell phones and vehicles as a result of and
15 in furtherance of their job duties. Specifically, PLAINTIFFS and other Non-Exempt Class
16 Members were required to use their personal cell phones and vehicles in order to perform work
17 related tasks. However, DEFENDANT unlawfully failed to reimburse PLAINTIFFS and other
18 Non-Exempt Class Members for the use of their personal cell phones and vehicles As a result, in
19 the course of their employment with DEFENDANT, the PLAINTIFFS and other Non-Exempt
20 Class Members incurred unreimbursed business expenses that included, but were not limited to,
21 costs related to the use of their personal cell phones and vehicles, all on behalf of and for the
22 benefit of DEFENDANT.

23 **D. Wage Statement Violations**

24 27. California Labor Code Section 226 required an employer to furnish its employees
25 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
26 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
27 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
28 name of the employee and only the last four digits of the employee's social security number or an

1 employee identification number other than a social security number, (8) the name and address of
2 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
3 period and the corresponding number of hours worked at each hourly rate by the employee.

4 28. From time to time during the CLASS PERIOD, when PLAINTIFFS and other
5 Non-Exempt Class Members missed meal and rest breaks, or were paid inaccurately for missed
6 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
7 to provide PLAINTIFFS and other Non-Exempt Class Members with complete and accurate wage
8 statements which failed to show, among other things, all deductions, the total hours worked and
9 all applicable hourly rates in effect during the pay period, and the corresponding amount of time
10 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
11 periods.

12 29. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
13 PLAINTIFFS and the Non-Exempt Class Members with wage statements that comply with Cal.
14 Lab. Code § 226.

15 30. As a result, DEFENDANT issued PLAINTIFFS and other members of the Non-
16 Exempt Class with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's
17 violations are knowing and intentional, were not isolated due to an unintentional payroll error due
18 to clerical or inadvertent mistake.

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

20 31. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
21 continues to fail to accurately pay PLAINTIFFS and other members of the Non-Exempt Class for
22 all hours worked.

23 32. During the CLASS PERIOD, from time-to-time DEFENDANT required
24 PLAINTIFFS and other members of the Non-Exempt Class to perform pre-shift or post-shift
25 working. This resulted in PLAINTIFFS and other members of the Non-Exempt Class to have to
26 work while off-the-clock.

27 33. DEFENDANT directed and directly benefited from the undercompensated off-the-
28 clock work performed by PLAINTIFFS and the other Non-Exempt Class Members.

1 34. DEFENDANT controlled the work schedules, duties, and protocols, applications,
2 assignments, and employment conditions of PLAINTIFFS and the other members of the Non-
3 Exempt Class.

4 35. DEFENDANT was able to track the amount of time PLAINTIFFS and the other
5 members of the Non-Exempt Class spent working; however, DEFENDANT failed to document,
6 track, or pay PLAINTIFFS and the other members of the Non-Exempt Class all wages earned and
7 owed for all the work they performed.

8 36. PLAINTIFFS and the other members of the Non-Exempt Class were non-exempt
9 employees, subject to the requirements of the California Labor Code.

10 37. DEFENDANT's policies and practices deprived PLAINTIFFS and the other Non-
11 Exempt Class Members of all minimum regular, overtime, and double time wages owed for the
12 off-the-clock work activities. Because PLAINTIFFS and the other members of the Non-Exempt
13 Class typically worked over forty (40) hours in a workweek, and more than eight (8) hours per
14 day, DEFENDANT's policies and practices also deprived them of overtime pay.

15 38. DEFENDANT knew or should have known that PLAINTIFFS and the other
16 members of the Non-Exempt Class off-the-clock work was compensable under the law.

17 39. As a result, PLAINTIFFS and the other members of the Non-Exempt Class
18 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and
19 benefit for the time spent working while off-the-clock. DEFENDANT's uniform policy and
20 practice to not pay PLAINTIFFS and the members of the Non-Exempt Class wages for all hours
21 worked in accordance with applicable law is evidenced by DEFENDANT's business records.

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

24 40. From time to time during the CLASS PERIOD, DEFENDANT failed and
25 continues to fail to accurately calculate and pay PLAINTIFFS and the other Non-Exempt Class
26 Members for their overtime and double time hours worked, meal and rest period premiums, and
27 redeemed sick pay. As a result, PLAINTIFFS and the other Non-Exempt Class Members
28 forfeited wages due to them for working overtime without compensation at the correct overtime

1 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
2 DEFENDANT's uniform policy and practice not to pay the Non-Exempt Class Members at the
3 correct rate for all overtime and double time worked, meal and rest period premiums, and
4 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT's business
5 records.

6 41. State law provides that employees must be paid overtime at one-and-one-half times
7 their "regular rate of pay." PLAINTIFFS and other Non-Exempt Class Members were
8 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
9 employee's performance.

10 42. The second component of PLAINTIFFS' and other Non-Exempt Class Members'
11 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFFS
12 and other Non-Exempt Class incentive wages based on their performance for DEFENDANTS.
13 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus
14 compensation when the employees met the various performance goals set by DEFENDANTS.

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

1 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by
2 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of
3 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
4 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

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

17 45. Pursuant to California Labor Code section 204, PLAINTIFFS and the Non-Exempt
18 Class members were entitled to timely payment of wages during their employment. PLAINTIFFS
19 and the Non-Exempt Class members, from time to time, did not receive payment of all wages,
20 including, but not limited to, overtime wages, minimum wages, meal period premium wages, and
21 rest period premium wages within permissible time period.

22 **H. Unlawful Deductions**

23 46. DEFENDANTS, from time-to-time unlawfully deducted wages from
24 PLAINTIFFS and Non-Exempt Class Members' pay without explanations and without
25 authorization to do so or notice to PLAINTIFFS and the Non-Exempt Class Members. As a result,
26 DEFENDANTS violated Labor Code § 221.

27 47. Specifically, as to PLAINTIFFS, PLAINTIFFS were from time to time unable to
28 take off duty meal and rest breaks and were not fully relieved of duty for their rest and meal

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

17 **I. Violations for Misclassification of Exempt Employees**

18 48. To qualify as an exempt employee, California requires that an employee must be
19 “primarily engaged in the duties that meet the test of the exemption” and “earns a monthly salary
20 equivalent to no less than two times the state minimum wage for full-time employment.” Labor
21 Code § 515. This forms the two-part test the employers must establish to properly exempt its
22 employees from overtime laws: (1) the salary basis test and (2) the duties test.

23 49. For example, on January 1, 2022, the minimum wage in the State of California
24 increased to \$15.00 per hour for employers. Thus, based on a forty (40) hour workweek, the
25 minimum salary for California exempt employees employed by employers with at least twenty-
26 six (26) employees in 2019, is \$62,400.

27 50. Throughout Plaintiff Uribe’s and Plaintiff Pascual’s employment, DEFENDANTS
28 employed Plaintiff Uribe and Plaintiff Pascual in various positions. Defendant improperly

1 classified those positions as exempt from overtime laws and other laws governing the employment
2 of non-exempt employees.

3 51. At all times during the CLASS PERIOD, DEFENDANTS failed to compensate
4 Plaintiff Uribe and Plaintiff Pascual and the other members of the Misclassification Class, with
5 an annual salary of at least two times the state minimum wage for full time employment by
6 employers with at least twenty-six employees. Specifically, Plaintiff Uribe and Plaintiff Pascual
7 earned a weekly salary of \$1,175, which amounted to an annual salary of \$61,121, which is below
8 the \$62,400 salary threshold to meet the test of exemption.

9 52. At all times during the CLASS PERIOD, Plaintiff Uribe, Plaintiff Pascual and the
10 other members of the Misclassification Class primarily performed non-exempt job duties and
11 were not primarily engaged in duties that meet the test of the exemption, but were nevertheless
12 classified by DEFENDANTS as exempt. Plaintiff Uribe, Plaintiff Pascual and the other members
13 of the Misclassification Class engaged in a finite set of tasks and had no power to exercise any
14 independent judgment and/or discretion. More specifically, DEFENDANTS' policy, practice and
15 procedure restrained Plaintiff Uribe, Plaintiff Pascual and the other members of the
16 Misclassification Class from evaluating possible courses of action and implementing decisions
17 based on their independent judgment and discretion. In other words, in exercising their duties,
18 Plaintiff Uribe, Plaintiff Pascual and the other members of the Misclassification Class lacked any
19 power to make any independent choice free from immediate supervision and with respect to
20 matters of significance. Plaintiff Uribe, Plaintiff Pascual and other members of the
21 Misclassification Class did not exercise the requisite discretion or independent judgment in the
22 training or supervision of employees based on the constraints, direction and control imposed by
23 DEFENDANTS.

24 53. At all times during the CLASS PERIOD, Plaintiff Uribe, Plaintiff Pascual and the
25 other members of the Misclassification Class did not did not have the authority to hire, fire, or
26 promote employees, determine their pay rates or benefits, or give raises, or otherwise make
27 employment-related, personnel decisions. Consequently, Plaintiff Uribe, Plaintiff Pascual and the
28 other members of the Misclassification Class did not have the authority to decide whether or not

1 an employee should be disciplined for an infraction. Disciplinary decisions were made by other
2 departments, or dictated by company policies. Overall, recommendations made by Plaintiff
3 Uribe, Plaintiff Pascual and the other members of the Misclassification Class were given no
4 weight on all the above issues. As a result, as Plaintiff Uribe, Plaintiff Pascual and the other
5 members of the Misclassification Class were engaged in a type of work that required no exercise
6 of independent judgment or discretion as to any matter of significance. Moreover, Plaintiff Uribe,
7 Plaintiff Pascual and the other members of the Misclassification Class were engaged in a type of
8 work unrelated to management policies.

9 54. Further, the work schedule for Plaintiff Uribe, Plaintiff Pascual and the other
10 members of the Misclassification Class, were set by DEFENDANTS. Typically, Plaintiff Uribe,
11 Plaintiff Pascual and other members of the Misclassification Class, regularly worked in excess of
12 eight (8) hours in a workday and more than forty (40) hours in a workweek. Nevertheless,
13 DEFENDANTS never provided Plaintiff Uribe, Plaintiff Pascual and the other members of the
14 Misclassification Class with overtime compensation and other benefits for the overtime hours
15 worked as required by law due to DEFENDANTS' improper treatment.

16 55. As a matter of company policy, practice, and procedure, DEFENDANTS have
17 unlawfully, unfairly and/or deceptively treated Plaintiff Uribe, Plaintiff Pascual and the other
18 members of the Misclassification Class as exempt employees, failed to pay the required overtime
19 compensation and otherwise failed to comply with all applicable labor laws with respect to
20 Plaintiff Uribe, Plaintiff Pascual and the other members of the Misclassification Class.

21 56. By reason of this uniform exemption practice, policy and procedure applicable to
22 Plaintiff Uribe and Plaintiff Pascual, DEFENDANTS committed acts of unfair competition in
23 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"),
24 by engaging in a company-wide policy, practice and procedure which failed to properly classify
25 Plaintiff Uribe, Plaintiff Pascual and the other members of the Misclassification Class and thereby
26 failed to pay them overtime wages for documented overtime hours worked.

27 57. The proper classification of Plaintiff Uribe, Plaintiff Pascual and the other
28 members of the Misclassification Class is DEFENDANTS' burden. DEFENDANTS had no

1 business policy, practice, or procedure to ensure that Plaintiff Uribe, Plaintiff Pascual and the
2 other members of the Misclassification Class were properly classified as exempt, and in fact, as a
3 matter of corporate policy erroneously and unilaterally classified misclassified as exempt based
4 on job title alone. As a result of DEFENDANTS' intentional disregard of the obligation to meet
5 this burden, DEFENDANTS failed to pay all required overtime compensation for work performed
6 by Plaintiff Uribe, Plaintiff Pascual and the other members of the Misclassification Class and
7 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

8 58. Additionally, DEFENDANTS failed to provide all the legally required off-duty
9 meal and rest breaks to Plaintiff Uribe, Plaintiff Pascual and the other members of the
10 Misclassification Class, as required by the applicable Wage Order and Labor Code. As a result of
11 its willful misclassification, DEFENDANTS did not have a practice of providing meal and rest
12 breaks to Plaintiff Uribe, Plaintiff Pascual and the other members of the Misclassification Class.
13 DEFENDANTS' failure to provide Plaintiff Uribe, Plaintiff Pascual and other members of the
14 Misclassification Class with legally required meal and rest breaks is evidenced by
15 DEFENDANTS' business records which contain no record of these breaks.

16 **CLASS ACTION ALLEGATIONS**

17 59. PLAINTIFFS bring this Class Action on behalf of themselves and on behalf of two
18 classes of employees that worked for Defendant Mitra and/or Defendant Denali in California at
19 any time beginning four (4) years prior to the filing of the original Complaint and ending on the
20 date as determined by the Court ("CLASS PERIOD"). The members of the classes are so
21 numerous that joinder of all class members is impractical. PLAINTIFF reserves the right to
22 amend the following class definitions before the Court determines whether class certification is
23 appropriate, or thereafter upon leave of Court.

- 24 a. **Non-Exempt Class**: All of Defendant Mitra's and/or Defendant Denali's current
25 and former non-exempt employees, paid in whole or in part on an hourly basis,
26 employed in California during the CLASS PERIOD ("Non-Exempt Class").

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1 b. **Misclassification Class**: All of Defendant Mitra's and/or Defendant Denali's
2 current and former exempt employees in California during the CLASS PERIOD
3 ("Misclassification Class").

4 c. The Non-Exempt Class and the Misclassification Class are collectively referred to
5 herein as the "CALIFORNIA CLASS".

6 60. The amount in controversy for the aggregate claim of the CALIFORNIA CLASS
7 Members is under five million dollars (\$5,000,000.00).

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

14 62. The members of the class are so numerous that joinder of all class members is
15 impractical.

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

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

27 b. Whether DEFENDANT maintained legally compliant rest period policies and
28 practices;

- 1 c. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA
2 CLASS Members accurate premium payments for missed meal and rest periods;
3 d. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA
4 CLASS Members accurate overtime wages;
5 e. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA
6 CLASS Members at least minimum wage for all hours worked;
7 f. Whether DEFENDANT failed to compensate PLAINTIFFS and the
8 CALIFORNIA CLASS Members for required business expenses;
9 g. Whether DEFENDANT issued legally compliant wage statements;
10 h. Whether DEFENDANT committed an act of unfair competition by systematically
11 failing to record and pay PLAINTIFFS and the other members of the
12 CALIFORNIA CLASS for all time worked;
13 i. Whether DEFENDANT committed an act of unfair competition by systematically
14 failing to record all meal and rest breaks missed by PLAINTIFFS and other
15 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
16 of this work, required employees to perform this work and permits or suffers to
17 permit this work;
18 j. Whether DEFENDANT committed an act of unfair competition in violation of the
19 UCL, by failing to provide the PLAINTIFFS and the other members of the
20 CALIFORNIA CLASS with the legally required meal and rest periods;
21 k. Whether DEFENDANT committed an act of unfair competition in violation of the
22 UCL, by misclassifying Plaintiff Uribe, Plaintiff Pascual and the other exempt
23 members of the CALIFORNIA CLASS as exempt employees.

24 64. PLAINTIFFS are members of the CALIFORNIA CLASS and suffered damages
25 as a result of DEFENDANT's conduct and actions alleged herein.

26 65. PLAINTIFFS' claims are typical of the claims of the CALIFORNIA CLASS, and
27 PLAINTIFFS have the same interests as the other members of the class.

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1 66. PLAINTIFFS will fairly and adequately represent and protect the interests of the
2 CALIFORNIA CLASS Members.

3 67. PLAINTIFFS retained able class counsel with extensive experience in class action
4 litigation.

5 68. Further, PLAINTIFFS' interests are coincident with, and not antagonistic to, the
6 interest of the other CALIFORNIA CLASS Members.

7 69. There is a strong community of interest among PLAINTIFFS and the members of
8 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
9 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
10 sustained.

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

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

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

1 72. Class treatment provides manageable judicial treatment calculated to bring an
2 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
3 the conduct of DEFENDANT.

4 **FIRST CAUSE OF ACTION**

5 **Unlawful Business Practices**

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

7 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

11 74. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
12 Code § 17021.

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

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

24 76. By the conduct alleged herein, DEFENDANT has engaged and continues to
25 engage in a business practice which violates California law, including but not limited to, the
26 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
27 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 515, 558, 1194, 1197, 1197.1, 1198,
28 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.

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

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

15 79. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
16 unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the
17 other members of the CALIFORNIA CLASS to be underpaid during their employment with
18 DEFENDANT.

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

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

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

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

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

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

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

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

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

3 **SECOND CAUSE OF ACTION**

4 **Failure To Pay Minimum Wages**

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

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

7 88. PLAINTIFFS, 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 89. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim
11 for DEFENDANT's willful and intentional violations of the California Labor Code and the
12 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate
13 and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

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

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

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

26 94. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
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1 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFFS
2 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

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

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

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

27 100. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked

1 and provide them with the requisite compensation, DEFENDANT acted and continues to act
2 intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the
3 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
4 consequences to them, and with the despicable intent of depriving them of their property and legal
5 rights, and otherwise causing them injury in order to increase company profits at the expense of
6 these employees.

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

18 **THIRD CAUSE OF ACTION**

19 **Failure To Pay Overtime Compensation**

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

21 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against ALL Defendants)**

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

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

3 104. 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.

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

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

12 107. During the CLASS PERIOD, PLAINTIFFS and CALIFORNIA CLASS Members
13 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
14 they worked, including overtime work.

15 108. 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 failed to accurately record overtime worked by
18 PLAINTIFFS and other CALIFORNIA CLASS Members and denied accurate compensation to
19 PLAINTIFFS and the other members of the CALIFORNIA CLASS for overtime worked,
20 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
21 (12) hours in a workday, and/or forty (40) hours in any workweek.

22 109. In committing these violations of the California Labor Code, DEFENDANT
23 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
24 PLAINTIFFS and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
25 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
26 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
27 regulations.

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1 110. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
2 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive the correct
3 overtime compensation for their time worked for DEFENDANT.

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

12 112. During the CLASS PERIOD, PLAINTIFFS and the other members of the
13 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
14 a failure to pay all earned wages.

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

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

27 115. DEFENDANT knew or should have known that PLAINTIFFS and the other
28 members of the CALIFORNIA CLASS were undercompensated for their time worked.

1 DEFENDANT systematically elected, either through intentional malfeasance or gross
2 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
3 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
4 PLAINTIFFS and the other members of the CALIFORNIA CLASS the correct overtime wages
5 for their overtime worked.

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

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

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1 **FOURTH CAUSE OF ACTION**

2 **Failure To Provide Required Meal Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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121. As a proximate result of the aforementioned violations, PLAINTIFFS 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 PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

122. PLAINTIFFS, 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.

123. From time to time, PLAINTIFFS 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. PLAINTIFFS and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate PLAINTIFFS 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 PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid rest periods is evidenced by DEFENDANT's business records.

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

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

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

6 **SIXTH CAUSE OF ACTION**

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

8 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

17 128. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
18 Code § 2802, by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA CLASS
19 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
20 benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA CLASS
21 members for expenses which included, but were not limited to, personal expenses incurred for the
22 use of personal cell phones and vehicles all on behalf of and for the benefit of DEFENDANT.
23 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
24 DEFENDANT to use their personal cell phones and vehicles to execute their essential job duties
25 on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not
26 reimburse PLAINTIFFS and the CALIFORNIA CLASS members for expenses resulting from
27 the use of personal cell phones and vehicles for DEFENDANT within the course and scope of
28 their employment for DEFENDANT. These expenses were necessary to complete their principal

1 job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
2 expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS and the
3 CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse
4 PLAINTIFFS and the CALIFORNIA CLASS members for these expenses as an employer is
5 required to do under the laws and regulations of California.

6 129. PLAINTIFFS therefore demand reimbursement for expenditures or losses incurred
7 by them and the CALIFORNIA CLASS members in the discharge of their job duties for
8 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory
9 rate and costs under Cal. Lab. Code § 2802.

10 **SEVENTH CAUSE OF ACTION**

11 **Failure To Provide Accurate Itemized Statements**

12 **(Cal. Lab. Code § 226)**

13 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

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

- 19 a. Gross wages earned,
- 20 b. (2) total hours worked by the employee, except for any employee whose
21 compensation is solely based on a salary and who is exempt from payment of
22 overtime under subdivision (a) of Section 515 or any applicable order of the
23 Industrial Welfare Commission,
- 24 c. the number of piece-rate units earned and any applicable piece rate if the employee
25 is paid on a piece-rate basis,
- 26 d. all deductions, provided that all deductions made on written orders of the employee
27 may be aggregated and shown as one item,
- 28 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.

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

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

134. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFFS 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, PLAINTIFFS 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

1 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
2 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective
3 member of the CALIFORNIA CLASS herein).

4 **EIGHTH CAUSE OF ACTION**

5 **Failure To Pay Wages When Due**

6 **(Cal. Lab. Code § 203)**

7 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

11 136. Cal. Lab. Code § 200 provides that:

12 As used in this article:

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

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

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

23 If an employee not having a written contract for a definite period quits his or her
24 employment, his or her wages shall become due and payable not later than 72 hours
25 thereafter, unless the employee has given 72 hours previous notice of his or her intention
26 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
27 Notwithstanding any other provision of law, an employee who quits without providing a
28 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.

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

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28

1 140. Cal. Lab. Code § 203 provides:

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

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

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

13 **NINTH CAUSE OF ACTION**

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

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

16 **(Alleged by PLAINTIFFS against all Defendants)**

17 143. PLAINTIFFS KANAFANI, URIBE, MCGEE, and PASCUAL reallege and
18 incorporates by this reference, as though fully set forth herein, the prior paragraphs of this
19 Complaint.

20 144. PAGA is a mechanism by which the State of California itself can enforce state labor
21 laws through the employee suing under the PAGA who does so as the proxy or agent of the state's
22 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
23 a law enforcement action designed to protect the public and not to benefit private parties. The
24 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
25 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
26 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
27 private attorneys general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch.
28 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

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1 145. PLAINTIFFS, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General Act,
3 bring this Representative Action on behalf of the State of California with respect to themselves and
4 all individuals who are or previously were employed by DEFENDANT and classified as non-
5 exempt employees in California during the time period of September 20, 2020 until the present (the
6 "AGGRIEVED EMPLOYEES").

7 146. On August 23, 2022, PLAINTIFFS KANAFANI and URIBE gave written notice by
8 certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer
9 of the specific provisions of this code alleged to have been violated as required by Labor Code §
10 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein.

11 147. On January 20, 2023, PLAINTIFFS MCGEE and PASCUAL gave written notice by
12 certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer
13 of the specific provisions of this code alleged to have been violated as required by Labor Code §
14 2699.3. See Exhibit #2, attached hereto and incorporated by this reference herein.

15 148. The statutory waiting period for Plaintiffs KANAFANI, URIBE, MCGEE, and
16 PASCUAL to add these allegations to the Complaint has expired. As a result, pursuant to Section
17 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to Section
18 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as
19 herein defined.

20 149. The policies, acts and practices heretofore described were and are an unlawful
21 business act or practice because DEFENDANTS (a) failed to properly record and pay
22 PLAINTIFFS and the other AGGRIEVED EMPLOYEES for all of the hours they worked,
23 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized
24 wage statements, (c) failed to provide mandatory meal breaks and rest breaks, (d) failed to pay
25 meal and rest break premiums at the correct rate, and (e) failed to timely pay wages at the correct
26 rate, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including
27 but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2,
28 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5,
1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to

1 statutory penalties as a result of such conduct. PLAINTIFFS hereby seek recovery of civil
2 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
3 representative of the State of California for the illegal conduct perpetrated on PLAINTIFFS and
4 the other AGGRIEVED EMPLOYEES.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, PLAINTIFFS pray for a judgment against each Defendant, jointly and
7 severally, as follows:

8 1. On behalf of the CALIFORNIA CLASS:

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

19 2. On behalf of the CALIFORNIA CLASS:

- 20 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
21 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
22 to Cal. Code of Civ. Proc. § 382;
23 b. Compensatory damages, according to proof at trial, including compensatory
24 damages for overtime compensation due to PLAINTIFFS and the other members
25 of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
26 thereon at the statutory rate;
27 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
28 the applicable IWC Wage Order;

- 1 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
2 which a violation occurs and one hundred dollars (\$100) per each member of the
3 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
4 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
5 violation of Cal. Lab. Code § 226
- 6 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
7 penalty from the due date thereof at the same rate until paid or until an action
8 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 9 f. The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA
10 CLASS incurred in the course of their job duties, plus interest, and costs of suit.
- 11 3. On behalf of the State of California and with respect to all AGGRIEVED
12 EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private
13 Attorneys General Act of 2004;
- 14 4. On all claims:
- 15 a. An award of interest, including prejudgment interest at the legal rate;
16 b. Such other and further relief as the Court deems just and equitable; and
17 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
18 including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.
- 19

20 DATED: July 11, 2023

JCL LAW FIRM, APC

21 By: 
22 Jean-Claude Lapuyade
23 Attorney for PLAINTIFFS
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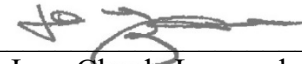
DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

DATED: July 11, 2023

JCL LAW FIRM, APC

By: _____



Jean-Claude Lapuyade
Attorney for PLAINTIFFS

EXHIBIT 1



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August 23, 2022

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

MITRA VI, LLC

c/o C T Corporation System
330 N Brand Blvd. STE 700
Glendale, CA 91203

Sent via Certified Mail and Return Receipt 7021 1970 0001 8870 0807

DENALI MIDCO 2, LLC

c/o C T Corporation System
330 N Brand Blvd. STE 700
Glendale, CA 91203

Sent via Certified Mail and Return Receipt 7021 1970 0001 8870 0814

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, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiffs WAEL KANAFANI and DAVID URIBE (“Plaintiffs”), and other aggrieved employees in a proposed lawsuit against Defendants MITRA VI, LLC (“Defendant Mitra”) and DENALI MIDCO 2 LLC (“Defendant Denali”) (hereinafter collectively “Defendants”). Plaintiff Kanafani has been employed by Defendants in California since October of 2017, as a non-exempt employee, paid on an hourly basis and non-discretionary bonuses, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Plaintiff Uribe was employed by Defendants from November of 2016 to July of 2022 and was at times classified by Defendants as a non-exempt employee, paid in part on an hourly basis and non-discretionary bonuses, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Plaintiff Uribe also worked for Defendants at times as a misclassified exempt employee. With respect to Defendants’ non-exempt employees and as a result of Defendants’ misclassification of exempt employees, Defendants unlawfully failed to record and pay Plaintiffs 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 Plaintiffs and other aggrieved employees for earned wages.

As a consequence, Plaintiffs contend that Defendants failed to fully compensate him and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiffs contends that Defendants' conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiffs seek to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant Mitra and/or Defendant Denali in California during the relevant claim period.

A true and correct copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiffs, and (v) 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. Plaintiffs therefore incorporate 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—Plaintiffs reserve 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 Plaintiffs continues their 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 Plaintiffs 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 Act of 2004 on behalf of Plaintiffs 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



Jean-Claude Lapuyade, Esq.

ZAKAY LAW GROUP, APLC

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Attorneys for PLAINTIFFS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

Wael Kanafani and David Uribe,
individuals, on behalf of themselves, and on
behalf of all persons similarly situated,

Plaintiffs,

v.

Mitra VI, LLC, an Arizona limited liability
company; Denali Midco 2 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;

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

DEMAND FOR A JURY TRIAL

PLAINTIFFS DAVID URIBE and Wael Kanafani (“PLAINTIFFS”), individuals, on behalf of themselves and all other similarly situated current and former employees, allege on information and belief, except for their own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

1. Defendant MITRA VI, LLC (“Defendant Mitra”) is an Arizona limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant DENALI MIDCO 2 LLC (“Defendant Denali”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant Mitra and Defendant Denali were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

4. DEFENDANTS own, operate, and/or manage carwashes with locations throughout the state of California, including in the county of San Diego, where PLAINTIFFS worked.

5. PLAINTIFF Wael Kanafani (“Plaintiff Kanafani”) has been employed by DEFENDANT in California since October of 2017, as a non-exempt employee, paid in part an

1 hourly basis and non-discretionary bonuses, and entitled to the legally required meal and rest
2 periods and payment of minimum and overtime wages due for all time worked.

3 6. PLAINTIFF DAVID URIBE (“Plaintiff Uribe”) was employed by DEFENDANT
4 in California from November of 2016 to July of 2022, and was at times classified by
5 DEFENDANT as a non-exempt employee, paid in part on an hourly basis and non-discretionary
6 bonuses, and entitled to the legally required meal and rest periods and payment of minimum and
7 overtime wages due for all time worked. Plaintiff Uribe also worked for DEFENDANT at times
8 as a misclassified exempt employee.

9 7. PLAINTIFFS bring this Class Action on behalf of themselves and on behalf of two
10 classes of employees that worked for Defendant Mitra and/or Defendant Denali in California at
11 any time beginning four (4) years prior to the filing of the original Complaint and ending on the
12 date as determined by the Court (“CLASS PERIOD”). The members of the classes are so
13 numerous that joinder of all class members is impractical. PLAINTIFF reserves the right to
14 amend the following class definitions before the Court determines whether class certification is
15 appropriate, or thereafter upon leave of Court:

16 a. **Non-Exempt Class**: All of Defendant Mitra’s and/or Defendant Denali’s
17 current and former non-exempt employees, paid in whole or in part on an
18 hourly basis, employed in California during the CLASS PERIOD (“Non-
19 Exempt Class”).

20 b. **Misclassification Class**: All of Defendant Mitra’s and/or Defendant
21 Denali’s current and former exempt employees in California during the
22 CLASS PERIOD (“Misclassification Class”).

23 c. The Non-Exempt Class and the Misclassification Class are collectively referred to
24 herein as the “CALIFORNIA CLASS”.

25 8. The amount in controversy for the aggregate claim of the CALIFORNIA CLASS
26 Members is under five million dollars (\$5,000,000.00).

27 9. PLAINTIFFS bring this Class Action on behalf of themselves and a
28 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses

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

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

19 11. The agents, servants and/or employees of the Defendants and each of them acting
20 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
21 agent, servant and/or employee of the Defendants, and personally participated in the conduct
22 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
23 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
24 Defendants are jointly and severally liable to PLAINTIFFS and the other members of the
25 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
26 Defendants' agents, servants and/or employees.

27 12. DEFENDANTS were PLAINTIFFS' employers or persons acting on behalf of the
28 PLAINTIFFS' employer, within the meaning of California Labor Code § 558, who violated or

1 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
2 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
3 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
4 at all relevant times.

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

10 14. DEFENDANT's uniform policies and practices alleged herein were unlawful,
11 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
12 wages due to PLAINTIFFS and other members of the CALIFORNIA CLASS.

13 15. PLAINTIFFS and other members of the CALIFORNIA CLASS seek an injunction
14 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFFS and
15 other members of the CALIFORNIA CLASS who have been economically injured by
16 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
17 relief.

18 **JURISDICTION AND VENUE**

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

23 17. Venue is proper in this Court pursuant to California Code of Civil Procedure,
24 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
25 the CALIFORNIA CLASS across California, including in this County, and committed the
26 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

27 **THE CONDUCT**

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

20 **A. Meal Period Violations**

21 19. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
22 required to pay PLAINTIFFS and Non-Exempt Class Members for all their time worked, meaning
23 the time during which an employee is subject to the control of an employer, including all the time
24 the employee is suffered or permitted to work. From time to time during the CLASS PERIOD,
25 DEFENDANT required PLAINTIFFS and Non-Exempt Class Members to work without paying
26 them for all the time they were under DEFENDANT’s control. Specifically, DEFENDANT
27 required PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS’
28 off-duty meal break. Indeed, there were many days where PLAINTIFFS did not even receive a

1 partial lunch. As a result, the PLAINTIFFS and other Non-Exempt Class Members forfeited
2 minimum wage and overtime compensation by regularly working without their time being
3 accurately recorded and without compensation at the applicable minimum wage and overtime
4 rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFFS and other Non-
5 Exempt Class Members for all time worked is evidenced by DEFENDANT's business records.

6 20. From time to time during the CLASS PERIOD, as a result of their rigorous work
7 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFFS and other Non-
8 Exempt Class Members are from time to time unable to take thirty (30) minute off duty meal
9 breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and other Non-
10 Exempt Class Members are required to perform work as ordered by DEFENDANT for more than
11 five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT fails to
12 provide PLAINTIFFS and Non-Exempt Class Members with a second off-duty meal period for
13 some workdays in which these employees are required by DEFENDANT to work ten (10) hours
14 of work. The nature of the work performed by PLAINTIFFS and other Non-Exempt Class
15 Members does not qualify for the limited and narrowly construed "on-duty" meal period
16 exception. When they were provided with meal periods, PLAINTIFFS and other Non-Exempt
17 Class Members were, from time to time, required to remain on duty and on call. DEFENDANT's
18 failure to provide PLAINTIFFS and the Non-Exempt Class Members with legally required meal
19 breaks is evidenced by DEFENDANT's business records. PLAINTIFFS and other members of
20 the Non-Exempt Class therefore forfeit meal breaks without additional compensation and in
21 accordance with DEFENDANT's strict corporate policy and practice.

22 **B. Rest Period Violations**

23 21. From time to time during the CLASS PERIOD, PLAINTIFFS and other Non-
24 Exempt Class Members were also required to work in excess of four (4) hours without being
25 provided ten (10) minute rest periods as a result of their rigorous work requirements and
26 DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied
27 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
28 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some

1 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
2 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
3 time to time. When they were provided with rest breaks, PLAINTIFFS and other Non-Exempt
4 Class Members were, from time to time, required to remain on premises, on duty and/or on call.
5 PLAINTIFFS and other Non-Exempt Class Members were also not provided with one-hour wages
6 *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's inadequate
7 staffing, PLAINTIFFS and other Non-Exempt Class Members were from time to time denied
8 their proper rest periods by DEFENDANT and DEFENDANT's managers.

9 **C. Unreimbursed Business Expenses**

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

21 23. In the course of their employment, DEFENDANT required PLAINTIFFS and
22 other Non-Exempt Class Members to use their personal cell phones and vehicles as a result of and
23 in furtherance of their job duties. Specifically, PLAINTIFFS and other Non-Exempt Class
24 Members were required to use their personal cell phones and vehicles in order to perform work
25 related tasks. However, DEFENDANT unlawfully failed to reimburse PLAINTIFFS and other
26 Non-Exempt Class Members for the use of their personal cell phones and vehicles As a result, in
27 the course of their employment with DEFENDANT, the PLAINTIFFS and other Non-Exempt
28 Class Members incurred unreimbursed business expenses that included, but were not limited to,

costs related to the use of their personal cell phones and vehicles, all on behalf of and for the benefit of DEFENDANT.

D. Wage Statement Violations

24. 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.

25. From time to time during the CLASS PERIOD, when PLAINTIFFS and other Non-Exempt 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, DEFENDANT also failed to provide PLAINTIFFS and other Non-Exempt Class Members with complete and accurate wage statements which failed to show, among other things, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period, and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

26. In addition to the foregoing, DEFENDANT, from time to time, failed to provide PLAINTIFFS and the Non-Exempt Class Members with wage statements that comply with Cal. Lab. Code § 226.

27. As a result, DEFENDANT issued PLAINTIFFS and other members of the Non-Exempt Class with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

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

1 28. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
2 continues to fail to accurately pay PLAINTIFFS and other members of the Non-Exempt Class for
3 all hours worked.

4 29. During the CLASS PERIOD, from time-to-time DEFENDANT required
5 PLAINTIFFS and other members of the Non-Exempt Class to perform pre-shift or post-shift
6 working. This resulted in PLAINTIFFS and other members of the Non-Exempt Class to have to
7 work while off-the-clock.

8 30. DEFENDANT directed and directly benefited from the undercompensated off-the-
9 clock work performed by PLAINTIFFS and the other Non-Exempt Class Members.

10 31. DEFENDANT controlled the work schedules, duties, and protocols, applications,
11 assignments, and employment conditions of PLAINTIFFS and the other members of the Non-
12 Exempt Class.

13 32. DEFENDANT was able to track the amount of time PLAINTIFFS and the other
14 members of the Non-Exempt Class spent working; however, DEFENDANT failed to document,
15 track, or pay PLAINTIFFS and the other members of the Non-Exempt Class all wages earned and
16 owed for all the work they performed.

17 33. PLAINTIFFS and the other members of the Non-Exempt Class were non-exempt
18 employees, subject to the requirements of the California Labor Code.

19 34. DEFENDANT's policies and practices deprived PLAINTIFFS and the other Non-
20 Exempt Class Members of all minimum regular, overtime, and double time wages owed for the
21 off-the-clock work activities. Because PLAINTIFFS and the other members of the Non-Exempt
22 Class typically worked over forty (40) hours in a workweek, and more than eight (8) hours per
23 day, DEFENDANT's policies and practices also deprived them of overtime pay.

24 35. DEFENDANT knew or should have known that PLAINTIFFS and the other
25 members of the Non-Exempt Class off-the-clock work was compensable under the law.

26 36. As a result, PLAINTIFFS and the other members of the Non-Exempt Class
27 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and
28 benefit for the time spent working while off-the-clock. DEFENDANT's uniform policy and

1 practice to not pay PLAINTIFFS and the members of the Non-Exempt Class wages for all hours
2 worked in accordance with applicable law is evidenced by DEFENDANT's business records.

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

5 37. From time to time during the CLASS PERIOD, DEFENDANT failed and
6 continues to fail to accurately calculate and pay PLAINTIFFS and the other Non-Exempt Class
7 Members for their overtime and double time hours worked, meal and rest period premiums, and
8 redeemed sick pay. As a result, PLAINTIFFS and the other Non-Exempt Class Members
9 forfeited wages due to them for working overtime without compensation at the correct overtime
10 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
11 DEFENDANT's uniform policy and practice not to pay the Non-Exempt Class Members at the
12 correct rate for all overtime and double time worked, meal and rest period premiums, and
13 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT's business
14 records.

15 38. State law provides that employees must be paid overtime at one-and-one-half times
16 their "regular rate of pay." PLAINTIFFS and other Non-Exempt Class Members were
17 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
18 employee's performance.

19 39. The second component of PLAINTIFFS' and other Non-Exempt Class Members'
20 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFFS
21 and other Non-Exempt Class incentive wages based on their performance for DEFENDANTS.
22 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus
23 compensation when the employees met the various performance goals set by DEFENDANTS.

24 40. However, from-time-to-time, when calculating the regular rate of pay, in those pay
25 periods where PLAINTIFFS and other Non-Exempt Class members worked overtime, double
26 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
27 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
28 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked

1 rather than just all non-overtime hours worked. Management and supervisors described the
2 incentive/bonus program to potential and new employees as part of the compensation package.
3 As a matter of law, the incentive compensation received by PLAINTIFFS and other Non-Exempt
4 Class members must be included in the “regular rate of pay.” The failure to do so has resulted in
5 a systematic underpayment of overtime and double time compensation, meal and rest period
6 premiums, and redeemed sick pay to PLAINTIFFS and other Non-Exempt Class members by
7 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
8 for non-employees shall be calculated in the same manner as the regular rate of pay for the
9 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
10 actually works overtime in that workweek. DEFENDANTS’ conduct, as articulated herein, by
11 failing to include the incentive compensation as part of the “regular rate of pay” for purposes of
12 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
13 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

14 41. In violation of the applicable sections of the California Labor Code and the
15 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
16 matter of company policy, practice, and procedure, intentionally and knowingly failed to
17 compensate PLAINTIFFS and the other members of the Non-Exempt Class at the correct rate of
18 pay for all overtime and double time worked, meal and rest period premiums, and sick pay. This
19 uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment of
20 the correct overtime and double time compensation, meal and rest period premiums, and sick pay
21 as required by California law which allowed DEFENDANT to illegally profit and gain an unfair
22 advantage over competitors who complied with the law. To the extent equitable tolling operates
23 to toll claims by the Non-Exempt Class members against DEFENDANT, the CLASS PERIOD
24 should be adjusted accordingly.

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

26 42. Pursuant to California Labor Code section 204, PLAINTIFFS and the Non-Exempt
27 Class members were entitled to timely payment of wages during their employment. PLAINTIFFS
28 and the Non-Exempt Class members, from time to time, did not receive payment of all wages,

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

3 **H. Unlawful Deductions**

4 43. DEFENDANTS, from time-to-time unlawfully deducted wages from
5 PLAINTIFFS and Non-Exempt Class Members' pay without explanations and without
6 authorization to do so or notice to PLAINTIFFS and the Non-Exempt Class Members. As a result,
7 DEFENDANTS violated Labor Code § 221.

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

26 **I. Violations for Misclassification of Exempt Employees**

27 45. To qualify as an exempt employee, California requires that an employee must be
28 "primarily engaged in the duties that meet the test of the exemption" and "earns a monthly salary

1 equivalent to no less than two times the state minimum wage for full-time employment.” Labor
2 Code § 515. This forms the two-part test the employers must establish to properly exempt its
3 employees from overtime laws: (1) the salary basis test and (2) the duties test.

4 46. For example, on January 1, 2022, the minimum wage in the State of California
5 increased to \$15.00 per hour for employers. Thus, based on a forty (40) hour workweek, the
6 minimum salary for California exempt employees employed by employers with at least twenty-
7 six (26) employees in 2019, is \$62,400.

8 47. Throughout PLAINTIFF Uribe’s employment, DEFENDANTS employed
9 PLAINTIFF Uribe in various positions. Defendant improperly classified those positions as
10 exempt from overtime laws and other laws governing the employment of non-exempt employees.

11 48. At all times during the CLASS PERIOD, DEFENDANTS failed to compensate
12 PLAINTIFF Uribe and the other members of the Misclassification Class, with an annual salary of
13 at least two times the state minimum wage for full time employment by employers with at least
14 twenty-six employees. Specifically, PLAINTIFF Uribe earned a weekly salary of \$1,175, which
15 amounted to an annual salary of \$61,121, which is below the \$62,400 salary threshold to meet the
16 test of exemption.

17 49. At all times during the CLASS PERIOD, PLAINTIFF Uribe and the other
18 members of the Misclassification Class primarily performed non-exempt job duties and were not
19 primarily engaged in duties that meet the test of the exemption, but were nevertheless classified
20 by DEFENDANTS as exempt. PLAINTIFF Uribe and the other members of the Misclassification
21 Class engaged in a finite set of tasks and had no power to exercise any independent judgment
22 and/or discretion. More specifically, DEFENDANTS’ policy, practice and procedure restrained
23 PLAINTIFF Uribe and the other members of the Misclassification Class from evaluating possible
24 courses of action and implementing decisions based on their independent judgment and discretion.
25 In other words, in exercising their duties, PLAINTIFF Uribe and the other members of the
26 Misclassification Class lacked any power to make any independent choice free from immediate
27 supervision and with respect to matters of significance. PLAINTIFF Uribe and other members of
28 the Misclassification Class did not exercise the requisite discretion or independent judgment in

1 the training or supervision of employees based on the constraints, direction and control imposed
2 by DEFENDANTS.

3 50. At all times during the CLASS PERIOD, PLAINTIFF Uribe and the other
4 members of the Misclassification Class did not did not have the authority to hire, fire, or promote
5 employees, determine their pay rates or benefits, or give raises, or otherwise make employment-
6 related, personnel decisions. Consequently, PLAINTIFF Uribe and the other members of the
7 Misclassification Class did not have the authority to decide whether or not an employee should
8 be disciplined for an infraction. Disciplinary decisions were made by other departments, or
9 dictated by company policies. Overall, recommendations made by PLAINTIFF Uribe and the
10 other members of the Misclassification Class were given no weight on all the above issues. As a
11 result, as PLAINTIFF Uribe and the other members of the Misclassification Class were engaged
12 in a type of work that required no exercise of independent judgment or discretion as to any matter
13 of significance. Moreover, PLAINTIFF Uribe and the other members of the Misclassification
14 Class were engaged in a type of work unrelated to management policies.

15 51. Further, the work schedule for PLAINTIFF Uribe and the other members of the
16 Misclassification Class, were set by DEFENDANTS. Typically, PLAINTIFF Uribe and other
17 members of the Misclassification Class, regularly worked in excess of eight (8) hours in a
18 workday and more than forty (40) hours in a workweek. Nevertheless, DEFENDANTS never
19 provided PLAINTIFF Uribe and the other members of the Misclassification Class with overtime
20 compensation and other benefits for the overtime hours worked as required by law due to
21 DEFENDANTS' improper treatment.

22 52. As a matter of company policy, practice, and procedure, DEFENDANTS have
23 unlawfully, unfairly and/or deceptively treated its PLAINTIFF Uribe and the other members of
24 the Misclassification Class as exempt employees, failed to pay the required overtime
25 compensation and otherwise failed to comply with all applicable labor laws with respect to
26 PLAINTIFF Uribe and the other members of the Misclassification Class.

27 53. By reason of this uniform exemption practice, policy and procedure applicable to
28 the PLAINTIFF Uribe, DEFENDANTS committed acts of unfair competition in violation of the

1 California Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging in
2 a company-wide policy, practice and procedure which failed to properly classify the PLAINTIFF
3 Uribe and the other members of the Misclassification Class and thereby failed to pay them
4 overtime wages for documented overtime hours worked.

5 54. The proper classification of the PLAINTIFF Uribe and the other members of the
6 Misclassification Class is DEFENDANTS' burden. DEFENDANTS had no business policy,
7 practice, or procedure to ensure that the PLAINTIFF Uribe and the other members of the
8 Misclassification Class were properly classified as exempt, and in fact, as a matter of corporate
9 policy erroneously and unilaterally classified misclassified as exempt based on job title alone. As
10 a result of DEFENDANTS' intentional disregard of the obligation to meet this burden,
11 DEFENDANTS failed to pay all required overtime compensation for work performed by the
12 PLAINTIFF Uribe and the other members of the Misclassification Class and violated the
13 California Labor Code and regulations promulgated thereunder as herein alleged.

14 55. Additionally, DEFENDANTS failed to provide all the legally required off-duty
15 meal and rest breaks to PLAINTIFF Uribe and the other members of the Misclassification Class,
16 as required by the applicable Wage Order and Labor Code. As a result of its willful
17 misclassification, DEFENDANTS did not have a practice of providing meal and rest breaks to
18 the PLAINTIFF Uribe and the other members of the Misclassification Class. DEFENDANTS'
19 failure to provide the PLAINTIFF Uribe and other members of the Misclassification Class with
20 legally required meal and rest breaks is evidenced by DEFENDANTS' business records which
21 contain no record of these breaks.

22 **CLASS ACTION ALLEGATIONS**

23 56. PLAINTIFFS bring this Class Action on behalf of themselves and on behalf of two
24 classes of employees that worked for Defendant Mitra and/or Defendant Denali in California at
25 any time beginning four (4) years prior to the filing of the original Complaint and ending on the
26 date as determined by the Court ("CLASS PERIOD"). The members of the classes are so
27 numerous that joinder of all class members is impractical. PLAINTIFF reserves the right to
28

1 amend the following class definitions before the Court determines whether class certification is
2 appropriate, or thereafter upon leave of Court.

- 3 a. **Non-Exempt Class**: All of Defendant Mitra's and/or Defendant Denali's current
4 and former non-exempt employees, paid in whole or in part on an hourly basis,
5 employed in California during the CLASS PERIOD ("Non-Exempt Class").
- 6 b. **Misclassification Class**: All of Defendant Mitra's and/or Defendant Denali's
7 current and former exempt employees in California during the CLASS PERIOD
8 ("Misclassification Class").
- 9 c. The Non-Exempt Class and the Misclassification Class are collectively referred to
10 herein as the "CALIFORNIA CLASS".

11 57. The amount in controversy for the aggregate claim of the CALIFORNIA CLASS
12 Members is under five million dollars (\$5,000,000.00).

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

19 59. The members of the class are so numerous that joinder of all class members is
20 impractical.

21 60. Common questions of law and fact regarding DEFENDANT's conduct, including
22 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately
23 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
24 regular rate of compensation for missed meal and rest period premiums, failing to provide legally
25 compliant meal and rest periods, failed to reimburse for business expenses, failure to provide
26 accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum
27 wage and overtime, exist as to all members of the class and predominate over any questions
28

1 affecting solely any individual members of the class. Among the questions of law and fact
2 common to the class are:

- 3 a. Whether DEFENDANT maintained legally compliant meal period policies and
4 practices;
- 5 b. Whether DEFENDANT maintained legally compliant rest period policies and
6 practices;
- 7 c. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA
8 CLASS Members accurate premium payments for missed meal and rest periods;
- 9 d. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA
10 CLASS Members accurate overtime wages;
- 11 e. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA
12 CLASS Members at least minimum wage for all hours worked;
- 13 f. Whether DEFENDANT failed to compensate PLAINTIFFS and the
14 CALIFORNIA CLASS Members for required business expenses;
- 15 g. Whether DEFENDANT issued legally compliant wage statements;
- 16 h. Whether DEFENDANT committed an act of unfair competition by systematically
17 failing to record and pay PLAINTIFFS and the other members of the
18 CALIFORNIA CLASS for all time worked;
- 19 i. Whether DEFENDANT committed an act of unfair competition by systematically
20 failing to record all meal and rest breaks missed by PLAINTIFFS and other
21 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
22 of this work, required employees to perform this work and permits or suffers to
23 permit this work;
- 24 j. Whether DEFENDANT committed an act of unfair competition in violation of the
25 UCL, by failing to provide the PLAINTIFFS and the other members of the
26 CALIFORNIA CLASS with the legally required meal and rest periods;

1 k. Whether DEFENDANT committed an act of unfair competition in violation of the
2 UCL, by misclassifying PLAINTIFF Uribe and the other exempt members of the
3 CALIFORNIA CLASS as exempt employees.

4 61. PLAINTIFFS are members of the CALIFORNIA CLASS and suffered damages
5 as a result of DEFENDANT's conduct and actions alleged herein.

6 62. PLAINTIFFS' claims are typical of the claims of the CALIFORNIA CLASS, and
7 PLAINTIFFS have the same interests as the other members of the class.

8 63. PLAINTIFFS will fairly and adequately represent and protect the interests of the
9 CALIFORNIA CLASS Members.

10 64. PLAINTIFFS retained able class counsel with extensive experience in class action
11 litigation.

12 65. Further, PLAINTIFFS' interests are coincident with, and not antagonistic to, the
13 interest of the other CALIFORNIA CLASS Members.

14 66. There is a strong community of interest among PLAINTIFFS and the members of
15 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
16 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
17 sustained.

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

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

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

8 69. Class treatment provides manageable judicial treatment calculated to bring an
9 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
10 the conduct of DEFENDANT.

11 **FIRST CAUSE OF ACTION**

12 **Unlawful Business Practices**

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

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

15 70. PLAINTIFFS, 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 71. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
19 Code § 17021.

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

24 Any person who engages, has engaged, or proposes to engage in unfair competition may
25 be enjoined in any court of competent jurisdiction. The court may make such orders or
26 judgments, including the appointment of a receiver, as may be necessary to prevent the
27 use or employment by any person of any practice which constitutes unfair competition, as
28 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).

1 73. By the conduct alleged herein, DEFENDANT has engaged and continues to
2 engage in a business practice which violates California law, including but not limited to, the
3 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
4 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 515, 558, 1194, 1197, 1197.1, 1198,
5 and 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
6 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
7 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

26 77. By the conduct alleged herein, DEFENDANT's practices were also unfair and
27 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
28

1 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members as
2 required by Cal. Lab. Code §§ 226.7 and 512.

3 78. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
4 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
5 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
6 each workday in which a second off-duty meal period was not timely provided for each ten (10)
7 hours of work.

8 79. PLAINTIFFS further demand on behalf of themselves and on behalf of each
9 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
10 not timely provided as required by law.

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

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

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

27 83. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
28 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,

1 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
2 engaging in any unlawful and unfair business practices in the future.

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

10 **SECOND CAUSE OF ACTION**

11 **Failure To Pay Minimum Wages**

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

13 **Alleged by PLAINTIFFS and the CALIFORNIA CLASS against ALL Defendants)**

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

17 86. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim
18 for DEFENDANT's willful and intentional violations of the California Labor Code and the
19 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate
20 and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

23 88. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
24 commission is the minimum wage to be paid to employees, and the payment of a less wage than
25 the minimum so fixed is unlawful.

26 89. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
27 including minimum wage compensation and interest thereon, together with the costs of suit.
28

1 90. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
2 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
3 they work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully
4 and intentionally deny timely payment of wages due to PLAINTIFFS and the other members of
5 the CALIFORNIA CLASS.

6 91. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
7 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
8 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFFS
9 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

19 94. During the CLASS PERIOD, PLAINTIFFS and the other members of the
20 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
21 failure to pay all earned wages.

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

27 96. DEFENDANT knew or should have known that PLAINTIFFS and the other
28 members of the CALIFORNIA CLASS were under-compensated for their time worked.

1 DEFENDANT systematically elected, either through intentional malfeasance or gross
2 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
3 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
4 PLAINTIFFS and the other members of the CALIFORNIA CLASS the correct minimum wages
5 for their time worked.

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

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

25 **THIRD CAUSE OF ACTION**

26 **Failure To Pay Overtime Compensation**

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

28 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against ALL Defendants)**

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

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

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

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

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

18 104. During the CLASS PERIOD, PLAINTIFFS and CALIFORNIA CLASS Members
19 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
20 they worked, including overtime work.

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

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

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

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

18 109. During the CLASS PERIOD, PLAINTIFFS and the other members of the
19 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
20 a failure to pay all earned wages.

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

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

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

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

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

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

3 **FOURTH CAUSE OF ACTION**

4 **Failure To Provide Required Meal Periods**

5 **(Cal. Lab. Code §§ 226.7 & 512)**

6 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

7 115. PLAINTIFFS 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.

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

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

118. As a proximate result of the aforementioned violations, PLAINTIFFS 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 PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

119. PLAINTIFFS, 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.

120. From time to time, PLAINTIFFS 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. PLAINTIFFS and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate PLAINTIFFS 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 PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid rest periods is evidenced by DEFENDANT's business records.

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

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

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

6 **SIXTH CAUSE OF ACTION**

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

8 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

17 125. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
18 Code § 2802, by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA CLASS
19 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
20 benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA CLASS
21 members for expenses which included, but were not limited to, personal expenses incurred for the
22 use of personal cell phones and vehicles all on behalf of and for the benefit of DEFENDANT.
23 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
24 DEFENDANT to use their personal cell phones and vehicles to execute their essential job duties
25 on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not
26 reimburse PLAINTIFFS and the CALIFORNIA CLASS members for expenses resulting from
27 the use of personal cell phones and vehicles for DEFENDANT within the course and scope of
28 their employment for DEFENDANT. These expenses were necessary to complete their principal

1 job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
2 expectation. Although these expenses were necessary expenses incurred by PLAINTIFFS and the
3 CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse
4 PLAINTIFFS and the CALIFORNIA CLASS members for these expenses as an employer is
5 required to do under the laws and regulations of California.

6 126. PLAINTIFFS therefore demand reimbursement for expenditures or losses incurred
7 by them and the CALIFORNIA CLASS members in the discharge of their job duties for
8 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory
9 rate and costs under Cal. Lab. Code § 2802.

10 **SEVENTH CAUSE OF ACTION**

11 **Failure To Provide Accurate Itemized Statements**

12 **(Cal. Lab. Code § 226)**

13 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

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

- 19 a. Gross wages earned,
- 20 b. (2) total hours worked by the employee, except for any employee whose
21 compensation is solely based on a salary and who is exempt from payment of
22 overtime under subdivision (a) of Section 515 or any applicable order of the
23 Industrial Welfare Commission,
- 24 c. the number of piece-rate units earned and any applicable piece rate if the employee
25 is paid on a piece-rate basis,
- 26 d. all deductions, provided that all deductions made on written orders of the employee
27 may be aggregated and shown as one item,
- 28 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.

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

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

131. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFFS 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, PLAINTIFFS 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

1 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
2 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective
3 member of the CALIFORNIA CLASS herein).

4 **EIGHTH CAUSE OF ACTION**

5 **Failure To Pay Wages When Due**

6 **(Cal. Lab. Code § 203)**

7 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

11 133. Cal. Lab. Code § 200 provides that:

12 As used in this article:

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

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

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

23 If an employee not having a written contract for a definite period quits his or her
24 employment, his or her wages shall become due and payable not later than 72 hours
25 thereafter, unless the employee has given 72 hours previous notice of his or her intention
26 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
27 Notwithstanding any other provision of law, an employee who quits without providing a
28 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.

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

30 137. Cal. Lab. Code § 203 provides:

1 If an employer willfully fails to pay, without abatement or reduction, in accordance with
2 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
3 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.

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

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

12 **PRAYER FOR RELIEF**

13 WHEREFORE, PLAINTIFFS pray for a judgment against each Defendant, jointly and
14 severally, as follows:

15 1. On behalf of the CALIFORNIA CLASS:

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

26 2. On behalf of the CALIFORNIA CLASS:

- 27 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
28 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant

1 to Cal. Code of Civ. Proc. § 382;

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

18 3. On all claims:

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

23
24 DATED: August __, 2022

ZAKAY LAW GROUP, APLC

25
26 By: 
27 Shani O. Zakay
28 Attorney for PLAINTIFFS

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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

DATED: August __, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFFS

EXHIBIT

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Denali Midco2, LLC
c/o CT Corporation System
30 N Brand Blvd, Ste 700
Glendale, CA 91203



9590 9402 7420 2055 3636 01

2. Article Number (Transfer from service label)

7021 1970 0001 8870 0814

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

NDS

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

AUG 29 2022

815312 Panat Service-341

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
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- ☐ Signature Confirmation™
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PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

EXHIBIT

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mitral, LLC
c/o CT Corporation System
330 N Brand Blvd, Ste 700
Glendale, CA 91203



9590 9402 7420 2055 3636 18

2. Article Number (Transfer from service label)

7021 1970 0001 8870 0807

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

AUG 29 2022

8/23/22 Kasa Service 002-341

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Insured Mail | |

Mail Restricted Delivery
(500)

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

EXHIBIT

EXHIBIT

EXHIBIT 2



Client #53301

January 20, 2023

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

MITRA VI, LLC

c/o C T Corporation System
330 N Brand Blvd. STE 700
Glendale, CA 91203

Sent via Certified Mail and Return Receipt No. 7022 2410 0003 0424 4856

c/o C T Corporation System
28 Liberty Street
New York, NY 10005

Sent via Certified Mail and Return Receipt No. 7022 2410 0003 0424 4832

DENALI MIDCO 2 LLC

c/o C T Corporation System
330 N Brand Blvd. STE 700
Glendale, CA 91203

Sent via Certified Mail and Return Receipt No. 7022 2410 0003 0424 4818

c/o C T Corporation System
28 Liberty Street
New York, NY 10005

Sent via Certified Mail and Return Receipt No. 7022 2410 0003 0424 4849

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, 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 Plaintiffs MICHAEL MCGEE and IMMANUEL PASCUAL ("Plaintiffs"), and other aggrieved employees in a proposed lawsuit against Defendants MITRA VI, LLC ("Defendant Mitra") and DENALI MIDCO 2 LLC ("Defendant Denali") (hereinafter collectively "Defendants"). Plaintiff McGee has been employed by Defendants in California since April of 2017 as a non-exempt employee, paid on an hourly basis and non-discretionary bonuses, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Plaintiff Pascual was employed by

Defendants from March of 2017 to February of 2022 and was at times classified by Defendants as a non-exempt employee, paid in part on an hourly basis and non-discretionary bonuses, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Plaintiff Pascual also worked for Defendants at times as a misclassified exempt employee. With respect to Defendants' non-exempt employees and as a result of Defendants' misclassification of exempt employees, Defendants unlawfully failed to record and pay Plaintiffs 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 Plaintiffs and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiffs further contend that Defendants failed to provide accurate wage statements to them, 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, 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.

Plaintiffs seek to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant Mitra and/or Defendant Denali in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiffs 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 Plaintiffs, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, 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. Plaintiffs therefore incorporate 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—Plaintiffs reserve 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 Plaintiffs continues their 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 Plaintiffs 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 Plaintiffs and all aggrieved California employees.

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

Sincerely,



Shani O. Zakay
Attorney for Plaintiffs

EXHIBIT

JCL LAW FIRM, APC

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Attorneys for PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MICHAEL MCGEE, WAEL KANAFANI,
DAVID URIBE, and IMMANUEL PASCUAL,
individuals, on behalf of themselves, and on
behalf of all persons similarly situated,

Plaintiffs,

v.

MITRA VI, LLC, an Arizona limited liability
company; DENALI MIDCO 2 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 WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203;
7 8) FAILURE TO PROVIDE ACCURATE
8 ITEMIZED STATEMENTS IN
9 VIOLATION OF CAL. LAB. CODE § 226.

10 **DEMAND FOR A JURY TRIAL**

11 PLAINTIFFS MICHAEL MCGEE, DAVID URIBE, WAEL KANAFANI and
12 IMMANUEL PASCUAL (“PLAINTIFFS”), individuals, on behalf of themselves and all other
13 similarly situated current and former employees, allege on information and belief, except for their
14 own acts and knowledge which are based on personal knowledge, the following:

15 **PRELIMINARY ALLEGATIONS**

16 1. Defendant MITRA VI, LLC (“Defendant Mitra”) is an Arizona limited liability
17 company that at all relevant times mentioned herein conducted and continues to conduct
18 substantial and regular business throughout California.

19 2. Defendant DENALI MIDCO 2 LLC (“Defendant Denali”) is a Delaware limited
20 liability company that at all relevant times mentioned herein conducted and continues to conduct
21 substantial and regular business throughout California.

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

26 4. DEFENDANTS own, operate, and/or manage carwashes with locations
27 throughout the state of California, including in the county of San Diego, where PLAINTIFFS
28 worked.

5. PLAINTIFF MICHAEL MCGEE (“Plaintiff McGee”) has been employed by
DEFENDANT in California since April of 2017 as a non-exempt employee, paid in part an hourly

1 basis and non-discretionary bonuses, and entitled to the legally required meal and rest periods and
2 payment of minimum and overtime wages due for all time worked.

3 6. PLAINTIFF WAEL KANAFANI (“Plaintiff Kanafani”) has been employed by
4 DEFENDANT in California since October of 2017, as a non-exempt employee, paid in part an
5 hourly basis and non-discretionary bonuses, and entitled to the legally required meal and rest
6 periods and payment of minimum and overtime wages due for all time worked.

7 7. PLAINTIFF DAVID URIBE (“Plaintiff Uribe”) was employed by DEFENDANT
8 in California from November of 2016 to July of 2022, and was at times classified by
9 DEFENDANT as a non-exempt employee, paid in part on an hourly basis and non-discretionary
10 bonuses, and entitled to the legally required meal and rest periods and payment of minimum and
11 overtime wages due for all time worked. Plaintiff Uribe also worked for DEFENDANT at times
12 as a misclassified exempt employee.

13 8. PLAINTIFF IMMANUEL PASCUAL (“Plaintiff Pascual”) was employed by
14 DEFENDANT in California from March of 2017 to February of 2022, and was at times classified
15 by DEFENDANT as a non-exempt employee, paid in part on an hourly basis and non-
16 discretionary bonuses, and entitled to the legally required meal and rest periods and payment of
17 minimum and overtime wages due for all time worked. Plaintiff Pascual also worked for
18 DEFENDANT at times as a misclassified exempt employee.

19 9. PLAINTIFFS bring this Class Action on behalf of themselves and on behalf of two
20 classes of employees that worked for Defendant Mitra and/or Defendant Denali in California at
21 any time beginning four (4) years prior to the filing of the original Complaint and ending on the
22 date as determined by the Court (“CLASS PERIOD”). The members of the classes are so
23 numerous that joinder of all class members is impractical. PLAINTIFF reserves the right to
24 amend the following class definitions before the Court determines whether class certification is
25 appropriate, or thereafter upon leave of Court:

- 26 a. **Non-Exempt Class**: All of Defendant Mitra’s and/or Defendant Denali’s
27 current and former non-exempt employees, paid in whole or in part on an
28

hourly basis, employed in California during the CLASS PERIOD (“Non-Exempt Class”).

b. **Misclassification Class**: All of Defendant Mitra’s and/or Defendant Denali’s current and former exempt employees in California during the CLASS PERIOD (“Misclassification Class”).

c. The Non-Exempt Class and the Misclassification Class are collectively referred to herein as the “CALIFORNIA CLASS”.

10. The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

12. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are presently unknown to PLAINTIFFS who therefore sue these DEFENDANTS by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFFS are informed and believe, and based upon that information and belief alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,

1 inclusive, are responsible in some manner for one or more of the events and happenings that
2 proximately caused the injuries and damages hereinafter alleged.

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

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

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

22 16. DEFENDANT's uniform policies and practices alleged herein were unlawful,
23 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
24 wages due to PLAINTIFFS and other members of the CALIFORNIA CLASS.

25 17. PLAINTIFFS and other members of the CALIFORNIA CLASS seek an injunction
26 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFFS and
27 other members of the CALIFORNIA CLASS who have been economically injured by
28

1 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
2 relief.

3 **JURISDICTION AND VENUE**

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

8 19. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
10 the CALIFORNIA CLASS across California, including in this County, and committed the
11 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

12 **THE CONDUCT**

13 20. In violation of the applicable sections of the California Labor Code and the
14 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
15 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
16 failed to provide legally compliant meal and rest periods, failed to accurately compensate
17 PLAINTIFFS and the other members of the CALIFORNIA CLASS for missed meal and rest
18 periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all
19 time worked, failed compensate PLAINTIFFS and other members of the CALIFORNIA CLASS
20 for off-the-clock work, failed to pay PLAINTIFFS and the other members of the CALIFORNIA
21 CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFFS and other
22 members of the CALIFORNIA CLASS meal rest premiums at the regular rate, failed to reimburse
23 PLAINTIFFS and other CALIFORNIA CLASS Members for business expenses, and failed to
24 issue to PLAINTIFFS and the members of the CALIFORNIA CLASS with accurate itemized
25 wage statements showing, among other things, all applicable hourly rates in effect during the pay
26 periods and the corresponding amount of time worked at each hourly rate. DEFENDANT's
27 uniform policies and practices are intended to purposefully avoid the accurate and full payment
28 for all time worked as required by California law which allows DEFENDANT to illegally profit

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

4 **A. Meal Period Violations**

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

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

1 Class Members were, from time to time, required to remain on duty and on call. DEFENDANT's
2 failure to provide PLAINTIFFS and the Non-Exempt Class Members with legally required meal
3 breaks is evidenced by DEFENDANT's business records. PLAINTIFFS and other members of
4 the Non-Exempt Class therefore forfeit meal breaks without additional compensation and in
5 accordance with DEFENDANT's strict corporate policy and practice.

6 **B. Rest Period Violations**

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

21 **C. Unreimbursed Business Expenses**

22 24. DEFENDANT as a matter of corporate policy, practice, and procedure,
23 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFFS
24 and the other Non-Exempt Class Members for required business expenses incurred by the
25 PLAINTIFFS and other Non-Exempt Class Members in direct consequence of discharging their
26 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are
27 required to indemnify employees for all expenses incurred in the course and scope of their
28 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her

1 employee for all necessary expenditures or losses incurred by the employee in direct consequence
2 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
3 even though unlawful, unless the employee, at the time of obeying the directions, believed them
4 to be unlawful."

5 25. In the course of their employment, DEFENDANT required PLAINTIFFS and
6 other Non-Exempt Class Members to use their personal cell phones and vehicles as a result of and
7 in furtherance of their job duties. Specifically, PLAINTIFFS and other Non-Exempt Class
8 Members were required to use their personal cell phones and vehicles in order to perform work
9 related tasks. However, DEFENDANT unlawfully failed to reimburse PLAINTIFFS and other
10 Non-Exempt Class Members for the use of their personal cell phones and vehicles As a result, in
11 the course of their employment with DEFENDANT, the PLAINTIFFS and other Non-Exempt
12 Class Members incurred unreimbursed business expenses that included, but were not limited to,
13 costs related to the use of their personal cell phones and vehicles, all on behalf of and for the
14 benefit of DEFENDANT.

15 **D. Wage Statement Violations**

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

24 27. From time to time during the CLASS PERIOD, when PLAINTIFFS and other
25 Non-Exempt Class Members missed meal and rest breaks, or were paid inaccurately for missed
26 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
27 to provide PLAINTIFFS and other Non-Exempt Class Members with complete and accurate wage
28 statements which failed to show, among other things, all deductions, the total hours worked and

1 all applicable hourly rates in effect during the pay period, and the corresponding amount of time
2 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
3 periods.

4 28. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
5 PLAINTIFFS and the Non-Exempt Class Members with wage statements that comply with Cal.
6 Lab. Code § 226.

7 29. As a result, DEFENDANT issued PLAINTIFFS and other members of the Non-
8 Exempt Class with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's
9 violations are knowing and intentional, were not isolated due to an unintentional payroll error due
10 to clerical or inadvertent mistake.

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

12 30. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
13 continues to fail to accurately pay PLAINTIFFS and other members of the Non-Exempt Class for
14 all hours worked.

15 31. During the CLASS PERIOD, from time-to-time DEFENDANT required
16 PLAINTIFFS and other members of the Non-Exempt Class to perform pre-shift or post-shift
17 working. This resulted in PLAINTIFFS and other members of the Non-Exempt Class to have to
18 work while off-the-clock.

19 32. DEFENDANT directed and directly benefited from the undercompensated off-the-
20 clock work performed by PLAINTIFFS and the other Non-Exempt Class Members.

21 33. DEFENDANT controlled the work schedules, duties, and protocols, applications,
22 assignments, and employment conditions of PLAINTIFFS and the other members of the Non-
23 Exempt Class.

24 34. DEFENDANT was able to track the amount of time PLAINTIFFS and the other
25 members of the Non-Exempt Class spent working; however, DEFENDANT failed to document,
26 track, or pay PLAINTIFFS and the other members of the Non-Exempt Class all wages earned and
27 owed for all the work they performed.
28

1 35. PLAINTIFFS and the other members of the Non-Exempt Class were non-exempt
2 employees, subject to the requirements of the California Labor Code.

3 36. DEFENDANT's policies and practices deprived PLAINTIFFS and the other Non-
4 Exempt Class Members of all minimum regular, overtime, and double time wages owed for the
5 off-the-clock work activities. Because PLAINTIFFS and the other members of the Non-Exempt
6 Class typically worked over forty (40) hours in a workweek, and more than eight (8) hours per
7 day, DEFENDANT's policies and practices also deprived them of overtime pay.

8 37. DEFENDANT knew or should have known that PLAINTIFFS and the other
9 members of the Non-Exempt Class off-the-clock work was compensable under the law.

10 38. As a result, PLAINTIFFS and the other members of the Non-Exempt Class
11 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and
12 benefit for the time spent working while off-the-clock. DEFENDANT's uniform policy and
13 practice to not pay PLAINTIFFS and the members of the Non-Exempt Class wages for all hours
14 worked in accordance with applicable law is evidenced by DEFENDANT's business records.

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

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

27 40. State law provides that employees must be paid overtime at one-and-one-half times
28 their "regular rate of pay." PLAINTIFFS and other Non-Exempt Class Members were

1 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
2 employee's performance.

3 41. The second component of PLAINTIFFS' and other Non-Exempt Class Members'
4 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFFS
5 and other Non-Exempt Class incentive wages based on their performance for DEFENDANTS.
6 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus
7 compensation when the employees met the various performance goals set by DEFENDANTS.

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

26 43. In violation of the applicable sections of the California Labor Code and the
27 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
28 matter of company policy, practice, and procedure, intentionally and knowingly failed to

1 compensate PLAINTIFFS and the other members of the Non-Exempt Class at the correct rate of
2 pay for all overtime and double time worked, meal and rest period premiums, and sick pay. This
3 uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment of
4 the correct overtime and double time compensation, meal and rest period premiums, and sick pay
5 as required by California law which allowed DEFENDANT to illegally profit and gain an unfair
6 advantage over competitors who complied with the law. To the extent equitable tolling operates
7 to toll claims by the Non-Exempt Class members against DEFENDANT, the CLASS PERIOD
8 should be adjusted accordingly.

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

10 44. Pursuant to California Labor Code section 204, PLAINTIFFS and the Non-Exempt
11 Class members were entitled to timely payment of wages during their employment. PLAINTIFFS
12 and the Non-Exempt Class members, from time to time, did not receive payment of all wages,
13 including, but not limited to, overtime wages, minimum wages, meal period premium wages, and
14 rest period premium wages within permissible time period.

15 **H. Unlawful Deductions**

16 45. DEFENDANTS, from time-to-time unlawfully deducted wages from
17 PLAINTIFFS and Non-Exempt Class Members' pay without explanations and without
18 authorization to do so or notice to PLAINTIFFS and the Non-Exempt Class Members. As a result,
19 DEFENDANTS violated Labor Code § 221.

20 46. Specifically, as to PLAINTIFFS, PLAINTIFFS were from time to time unable to
21 take off duty meal and rest breaks and were not fully relieved of duty for their rest and meal
22 periods. PLAINTIFFS were required to perform work as ordered by DEFENDANT for more than
23 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
24 failed to provide PLAINTIFFS with a second off-duty meal period each workday in which they
25 were required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided
26 PLAINTIFFS with a rest break, they required PLAINTIFFS to remain on-duty and on-call for the
27 rest break. DEFENDANT policy caused PLAINTIFFS to remain on-call and on-duty during what
28 was supposed to be their off-duty meal periods. PLAINTIFFS therefore forfeited meal and rest

breaks without additional compensation and in accordance with DEFENDANT’S strict corporate policy and practice. Moreover, DEFENDANT also provided PLAINTIFFS with paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFFS for required business expenses related to the personal expenses incurred for the use of their personal cell phones and vehicles, on behalf of and in furtherance of his employment with DEFENDANT. To date, DEFENDANT has not fully paid PLAINTIFFS the minimum, overtime and double time compensation still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFFS individually do not exceed the sum or value of \$75,000.

I. Violations for Misclassification of Exempt Employees

47. To qualify as an exempt employee, California requires that an employee must be “primarily engaged in the duties that meet the test of the exemption” and “earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment.” Labor Code § 515. This forms the two-part test the employers must establish to properly exempt its employees from overtime laws: (1) the salary basis test and (2) the duties test.

48. For example, on January 1, 2022, the minimum wage in the State of California increased to \$15.00 per hour for employers. Thus, based on a forty (40) hour workweek, the minimum salary for California exempt employees employed by employers with at least twenty-six (26) employees in 2019, is \$62,400.

49. Throughout Plaintiff Uribe’s and Plaintiff Pascual’s employment, DEFENDANTS employed Plaintiff Uribe and Plaintiff Pascual in various positions. Defendant improperly classified those positions as exempt from overtime laws and other laws governing the employment of non-exempt employees.

50. At all times during the CLASS PERIOD, DEFENDANTS failed to compensate Plaintiff Uribe and Plaintiff Pascual and the other members of the Misclassification Class, with an annual salary of at least two times the state minimum wage for full time employment by employers with at least twenty-six employees. Specifically, Plaintiff Uribe and Plaintiff Pascual

1 earned a weekly salary of \$1,175, which amounted to an annual salary of \$61,121, which is below
2 the \$62,400 salary threshold to meet the test of exemption.

3 51. At all times during the CLASS PERIOD, Plaintiff Uribe, Plaintiff Pascual and the
4 other members of the Misclassification Class primarily performed non-exempt job duties and
5 were not primarily engaged in duties that meet the test of the exemption, but were nevertheless
6 classified by DEFENDANTS as exempt. Plaintiff Uribe, Plaintiff Pascual and the other members
7 of the Misclassification Class engaged in a finite set of tasks and had no power to exercise any
8 independent judgment and/or discretion. More specifically, DEFENDANTS' policy, practice and
9 procedure restrained Plaintiff Uribe, Plaintiff Pascual and the other members of the
10 Misclassification Class from evaluating possible courses of action and implementing decisions
11 based on their independent judgment and discretion. In other words, in exercising their duties,
12 Plaintiff Uribe, Plaintiff Pascual and the other members of the Misclassification Class lacked any
13 power to make any independent choice free from immediate supervision and with respect to
14 matters of significance. Plaintiff Uribe, Plaintiff Pascual and other members of the
15 Misclassification Class did not exercise the requisite discretion or independent judgment in the
16 training or supervision of employees based on the constraints, direction and control imposed by
17 DEFENDANTS.

18 52. At all times during the CLASS PERIOD, Plaintiff Uribe, Plaintiff Pascual and the
19 other members of the Misclassification Class did not did not have the authority to hire, fire, or
20 promote employees, determine their pay rates or benefits, or give raises, or otherwise make
21 employment-related, personnel decisions. Consequently, Plaintiff Uribe, Plaintiff Pascual and the
22 other members of the Misclassification Class did not have the authority to decide whether or not
23 an employee should be disciplined for an infraction. Disciplinary decisions were made by other
24 departments, or dictated by company policies. Overall, recommendations made by Plaintiff
25 Uribe, Plaintiff Pascual and the other members of the Misclassification Class were given no
26 weight on all the above issues. As a result, as Plaintiff Uribe, Plaintiff Pascual and the other
27 members of the Misclassification Class were engaged in a type of work that required no exercise
28 of independent judgment or discretion as to any matter of significance. Moreover, Plaintiff Uribe,

1 Plaintiff Pascual and the other members of the Misclassification Class were engaged in a type of
2 work unrelated to management policies.

3 53. Further, the work schedule for Plaintiff Uribe, Plaintiff Pascual and the other
4 members of the Misclassification Class, were set by DEFENDANTS. Typically, Plaintiff Uribe,
5 Plaintiff Pascual and other members of the Misclassification Class, regularly worked in excess of
6 eight (8) hours in a workday and more than forty (40) hours in a workweek. Nevertheless,
7 DEFENDANTS never provided Plaintiff Uribe, Plaintiff Pascual and the other members of the
8 Misclassification Class with overtime compensation and other benefits for the overtime hours
9 worked as required by law due to DEFENDANTS' improper treatment.

10 54. As a matter of company policy, practice, and procedure, DEFENDANTS have
11 unlawfully, unfairly and/or deceptively treated Plaintiff Uribe, Plaintiff Pascual and the other
12 members of the Misclassification Class as exempt employees, failed to pay the required overtime
13 compensation and otherwise failed to comply with all applicable labor laws with respect to
14 Plaintiff Uribe, Plaintiff Pascual and the other members of the Misclassification Class.

15 55. By reason of this uniform exemption practice, policy and procedure applicable to
16 Plaintiff Uribe and Plaintiff Pascual, DEFENDANTS committed acts of unfair competition in
17 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"),
18 by engaging in a company-wide policy, practice and procedure which failed to properly classify
19 Plaintiff Uribe, Plaintiff Pascual and the other members of the Misclassification Class and thereby
20 failed to pay them overtime wages for documented overtime hours worked.

21 56. The proper classification of Plaintiff Uribe, Plaintiff Pascual and the other
22 members of the Misclassification Class is DEFENDANTS' burden. DEFENDANTS had no
23 business policy, practice, or procedure to ensure that Plaintiff Uribe, Plaintiff Pascual and the
24 other members of the Misclassification Class were properly classified as exempt, and in fact, as a
25 matter of corporate policy erroneously and unilaterally classified misclassified as exempt based
26 on job title alone. As a result of DEFENDANTS' intentional disregard of the obligation to meet
27 this burden, DEFENDANTS failed to pay all required overtime compensation for work performed
28

1 by Plaintiff Uribe, Plaintiff Pascual and the other members of the Misclassification Class and
2 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

3 57. Additionally, DEFENDANTS failed to provide all the legally required off-duty
4 meal and rest breaks to Plaintiff Uribe, Plaintiff Pascual and the other members of the
5 Misclassification Class, as required by the applicable Wage Order and Labor Code. As a result of
6 its willful misclassification, DEFENDANTS did not have a practice of providing meal and rest
7 breaks to Plaintiff Uribe, Plaintiff Pascual and the other members of the Misclassification Class.
8 DEFENDANTS' failure to provide Plaintiff Uribe, Plaintiff Pascual and other members of the
9 Misclassification Class with legally required meal and rest breaks is evidenced by
10 DEFENDANTS' business records which contain no record of these breaks.

11 CLASS ACTION ALLEGATIONS

12 58. PLAINTIFFS bring this Class Action on behalf of themselves and on behalf of two
13 classes of employees that worked for Defendant Mitra and/or Defendant Denali in California at
14 any time beginning four (4) years prior to the filing of the original Complaint and ending on the
15 date as determined by the Court ("CLASS PERIOD"). The members of the classes are so
16 numerous that joinder of all class members is impractical. PLAINTIFF reserves the right to
17 amend the following class definitions before the Court determines whether class certification is
18 appropriate, or thereafter upon leave of Court.

- 19 a. **Non-Exempt Class**: All of Defendant Mitra's and/or Defendant Denali's current
20 and former non-exempt employees, paid in whole or in part on an hourly basis,
21 employed in California during the CLASS PERIOD ("Non-Exempt Class").
22 b. **Misclassification Class**: All of Defendant Mitra's and/or Defendant Denali's
23 current and former exempt employees in California during the CLASS PERIOD
24 ("Misclassification Class").
25 c. The Non-Exempt Class and the Misclassification Class are collectively referred to
26 herein as the "CALIFORNIA CLASS".

27 59. The amount in controversy for the aggregate claim of the CALIFORNIA CLASS
28 Members is under five million dollars (\$5,000,000.00).

1 60. PLAINTIFFS 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 61. The members of the class are so numerous that joinder of all class members is
8 impractical.

9 62. 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 PLAINTIFFS and the CALIFORNIA
23 CLASS Members accurate premium payments for missed meal and rest periods;
- 24 d. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA
25 CLASS Members accurate overtime wages;
- 26 e. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA
27 CLASS Members at least minimum wage for all hours worked;

- 1 f. Whether DEFENDANT failed to compensate PLAINTIFFS and the
2 CALIFORNIA 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 PLAINTIFFS and the other members of the
6 CALIFORNIA 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 PLAINTIFFS 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 PLAINTIFFS and the other members of the
14 CALIFORNIA CLASS with the legally required meal and rest periods;
- 15 k. Whether DEFENDANT committed an act of unfair competition in violation of the
16 UCL, by misclassifying Plaintiff Uribe, Plaintiff Pascual and the other exempt
17 members of the CALIFORNIA CLASS as exempt employees.
- 18 63. PLAINTIFFS are members of the CALIFORNIA CLASS and suffered damages
19 as a result of DEFENDANT's conduct and actions alleged herein.
- 20 64. PLAINTIFFS' claims are typical of the claims of the CALIFORNIA CLASS, and
21 PLAINTIFFS have the same interests as the other members of the class.
- 22 65. PLAINTIFFS will fairly and adequately represent and protect the interests of the
23 CALIFORNIA CLASS Members.
- 24 66. PLAINTIFFS retained able class counsel with extensive experience in class action
25 litigation.
- 26 67. Further, PLAINTIFFS' interests are coincident with, and not antagonistic to, the
27 interest of the other CALIFORNIA CLASS Members.
- 28

1 68. There is a strong community of interest among PLAINTIFFS and the members of
2 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
3 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
4 sustained.

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

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

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

23 71. Class treatment provides manageable judicial treatment calculated to bring an
24 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
25 the conduct of DEFENDANT.

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

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

8 73. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

21 75. By the conduct alleged herein, DEFENDANT has engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 515, 558, 1194, 1197, 1197.1, 1198,
25 and 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
26 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
27 constitute unfair competition, including restitution of wages wrongfully withheld.

28 76. 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

1 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
2 Business & Professions Code, including restitution of wages wrongfully withheld.

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

12 78. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
13 unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the
14 other members of the CALIFORNIA CLASS to be underpaid during their employment with
15 DEFENDANT.

16 79. By the conduct alleged herein, DEFENDANT's practices were also unfair and
17 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
18 mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members as
19 required by Cal. Lab. Code §§ 226.7 and 512.

20 80. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
21 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
22 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
23 each workday in which a second off-duty meal period was not timely provided for each ten (10)
24 hours of work.

25 81. PLAINTIFFS further demand on behalf of themselves and on behalf of each
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
27 not timely provided as required by law.
28

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

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

12 84. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
13 to, and do, seek such relief as may be necessary to restore to them the money and property which
14 DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
15 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
16 business practices, including earned but unpaid wages for all time worked.

17 85. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
18 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
19 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
20 engaging in any unlawful and unfair business practices in the future.

21 86. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
22 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
23 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
24 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other
25 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
26 and economic harm unless DEFENDANT is restrained from continuing to engage in these
27 unlawful and unfair business practices.

28 ///

1 **SECOND CAUSE OF ACTION**

2 **Failure To Pay Minimum Wages**

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

4 **Alleged by PLAINTIFFS and the CALIFORNIA CLASS against ALL Defendants)**

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

8 88. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim
9 for DEFENDANT's willful and intentional violations of the California Labor Code and the
10 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate
11 and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

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

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

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

19 92. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
20 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
21 they work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully
22 and intentionally deny timely payment of wages due to PLAINTIFFS and the other members of
23 the CALIFORNIA CLASS.

24 93. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
25 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
26 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFFS
27 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.
28

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

7 95. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
8 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive the correct
9 minimum wage compensation for their time worked for DEFENDANT.

10 96. During the CLASS PERIOD, PLAINTIFFS and the other members of the
11 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
12 failure to pay all earned wages.

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

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

25 99. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
27 and provide them with the requisite compensation, DEFENDANT acted and continues to act
28 intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the

1 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
2 consequences to them, and with the despicable intent of depriving them of their property and legal
3 rights, and otherwise causing them injury in order to increase company profits at the expense of
4 these employees.

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

19 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against ALL Defendants)**

20 101. PLAINTIFFS, 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.

23 102. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim
24 for DEFENDANT's willful and intentional violations of the California Labor Code and the
25 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
26 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
27 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.
28

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

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

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

10 106. During the CLASS PERIOD, PLAINTIFFS and CALIFORNIA CLASS Members
11 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
12 they worked, including overtime work.

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

20 108. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
22 PLAINTIFFS and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
23 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
24 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
25 regulations.

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

1 110. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
2 from the overtime requirements of the law. None of these exemptions are applicable to
3 PLAINTIFFS and the other members of the CALIFORNIA CLASS. Further, PLAINTIFFS and
4 the other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
5 agreement that would preclude the causes of action contained herein this Complaint. Rather,
6 PLAINTIFFS bring this Action on behalf of themselves, and the CALIFORNIA CLASS, based
7 on DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of
8 California.

9 111. During the CLASS PERIOD, PLAINTIFFS and the other members of the
10 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
11 a failure to pay all earned wages.

12 112. DEFENDANT failed to accurately pay PLAINTIFFS and the other members of
13 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
14 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
15 though PLAINTIFFS and the other members of the CALIFORNIA CLASS were regularly
16 required to work, and did in fact work overtime, and did in fact work overtime as to which
17 DEFENDANT failed to accurately record and pay as evidenced by DEFENDANT's business
18 records and witnessed by employees.

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

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

1 PLAINTIFFS and the other members of the CALIFORNIA CLASS the correct overtime wages
2 for their overtime worked.

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

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

21 **FOURTH CAUSE OF ACTION**

22 **Failure To Provide Required Meal Periods**

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

24 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

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

1 118. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
2 required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA CLASS Members as
3 required by the applicable Wage Order and Labor Code. The nature of the work performed by
4 PLAINTIFFS and CALIFORNIA CLASS Members did not prevent these employees from being
5 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
6 rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members were often
7 not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
8 failure to provide PLAINTIFFS and the CALIFORNIA CLASS Members with legally required
9 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
10 records. Further, DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS
11 Members with a second off-duty meal period in some workdays in which these employees were
12 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFFS and other
13 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
14 and in accordance with DEFENDANT's strict corporate policy and practice.

15 119. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
16 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS Members
17 who were not provided a meal period, in accordance with the applicable Wage Order, one
18 additional hour of compensation at each employee's regular rate of pay for each workday that a
19 meal period was not provided.

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

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1 **FIFTH CAUSE OF ACTION**

2 **Failure To Provide Required Rest Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

SIXTH CAUSE OF ACTION

Failure To Reimburse Employees for Required Expenses

(Cal. Lab. Code §§ 2802)

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

125. PLAINTIFFS, 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.

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

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

127. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA CLASS members for expenses which included, but were not limited to, personal expenses incurred for the use of personal cell phones and vehicles all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell phones and vehicles to execute their essential job duties on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFFS and the CALIFORNIA CLASS members for expenses resulting from the use of personal cell phones and vehicles 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 PLAINTIFFS and the

CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFFS and the CALIFORNIA CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

128. PLAINTIFFS therefore demand reimbursement for expenditures or losses incurred by them 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 PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

129. PLAINTIFFS, 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.

130. 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,

- 1 g. the name of the employee and his or her social security number, except that by
2 January 1, 2008, only the last four digits of his or her social security number of an
3 employee identification number other than social security number may be shown
4 on the itemized statement,
- 5 h. the name and address of the legal entity that is the employer, and
- 6 i. all applicable hourly rates in effect during the pay period and the corresponding
7 number of hours worked at each hourly rate by the employee.

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

17 132. In addition to the foregoing, DEFENDANT failed to provide itemized wage
18 statements to PLAINTIFFS and members of the CALIFORNIA CLASS that complied with the
19 requirements of California Labor Code Section 226.

20 133. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
21 § 226, causing injury and damages to PLAINTIFFS and the other members of the CALIFORNIA
22 CLASS. These damages include, but are not limited to, costs expended calculating the correct
23 wages for all missed meal and rest breaks and the amount of employment taxes which were not
24 properly paid to state and federal tax authorities. These damages are difficult to estimate.
25 Therefore, PLAINTIFFS and the other members of the CALIFORNIA CLASS may elect to
26 recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
27 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
28 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but

1 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective
2 member of the CALIFORNIA CLASS herein).

3 **EIGHTH CAUSE OF ACTION**

4 **Failure To Pay Wages When Due**

5 **(Cal. Lab. Code § 203)**

6 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

7 134. PLAINTIFFS, 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.

10 135. Cal. Lab. Code § 200 provides that:

11 As used in this article:

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

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

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

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

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

31 139. 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

1 the same rate until paid or until an action therefor is commenced; but the wages shall not
2 continue for more than 30 days.

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

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

11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFFS pray for a judgment against each Defendant, jointly and
13 severally, as follows:

14 1. On behalf of the CALIFORNIA CLASS:

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

25 2. On behalf of the CALIFORNIA CLASS:

- 26 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
27 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
28 to Cal. Code of Civ. Proc. § 382;
b. Compensatory damages, according to proof at trial, including compensatory

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

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

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

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

14 f. The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA
15 CLASS incurred in the course of their job duties, plus interest, and costs of suit.

16 3. On all claims:

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

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

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

21
22 DATED: January 20, 2023

23 **ZAKAY LAW GROUP, APLC**

24 By: 
25 Shani O. Zakay
26 Attorney for PLAINTIFFS
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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

DATED: January 20, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFFS

EXHIBIT