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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

CHRISSY CLEVELAND, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiff,

v.

BESTDRIVE, LLC, a Delaware limited
liability company; CONTINENTAL
AUTOMOTIVE SYSTEMS, INC., a Delaware
corporation;; and DOES 1-50, Inclusive,

Defendants.

Case No: CIVSB2312594

**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;

- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 9) FAILURE TO PROVIDE SICK PAY AND FAILURE TO PROVIDE PAID SICK LEAVE BALANCE IN VIOLATION OF CAL. LAB. CODE §§ 246, *et seq.*
- 10) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.

DEMAND FOR A JURY TRIAL

PLAINTIFF CHRISSY CLEVELAND (“PLAINTIFF”), an individual, on behalf of herself and all other similarly situated current and former employees, alleges on information and belief, except for her own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

1. Defendant BESTDRIVE, LLC (“Defendant BestDrive”) is a Delaware limited liability company at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant CONTINENTAL AUTOMOTIVE SYSTEMS, INC. (“Defendant Continental Automotive Systems”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant BestDrive and Defendant Continental Automotive Systems, 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 tire centers throughout the state of California, including in the county of San Bernardino, where PLAINTIFF worked.

1 5. PLAINTIFF was employed by DEFENDANTS in California from March of 2020
2 to June of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to the legally
3 required meal and rest periods and payment of minimum and overtime wages due for all time
4 worked.

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

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

23 8. The true names and capacities, whether individual, corporate, subsidiary,
24 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
25 presently unknown to PLAINTIFFS who therefore sues these DEFENDANTS by such fictitious
26 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
27 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
28 ascertained. PLAINTIFFS is informed and believes, and based upon that information and belief

1 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
2 inclusive, are responsible in some manner for one or more of the events and happenings that
3 proximately caused the injuries and damages hereinafter alleged.

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

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

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

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

26 13. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
27 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and
28 other members of the CALIFORNIA CLASS who has been economically injured by

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

3 **JURISDICTION AND VENUE**

4 14. 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 PLAINTIFF and similarly situated employees of
7 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

8 15. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ
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 16. In violation of the applicable sections of the California Labor Code and the
14 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS 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 PLAINTIFF 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 PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
20 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
21 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal and rest
22 premiums at the regular rate of pay, failed to pay PLAINTIFF and other CALIFORNIA CLASS
23 Members redeemed sick pay at the regular rate of pay, failed to reimburse PLAINTIFF and other
24 CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and
25 the members of the CALIFORNIA CLASS with accurate itemized wage statements showing,
26 among other things, all applicable hourly rates in effect during the pay periods and the
27 corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and
28 practices are intended to purposefully avoid the accurate and full payment for all time worked as

1 required by California law which allows DEFENDANTS to illegally profit and gain an unfair
2 advantage over competitors who comply with the law. To the extent equitable tolling operates to
3 toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should
4 be adjusted accordingly.

5 **A. Meal Period Violations**

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

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

1 PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and
2 narrowly construed “on-duty” meal period exception. When they were provided with meal
3 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
4 required to remain on premises, on duty and on call. Further, from time to time, DEFENDANT
5 required PLAINTIFFS and other CALIFORNIA CLASS Members to maintain cordless
6 communication devices in order to receive and/or respond to work-related communications during
7 their off-duty meal periods. DEFENDANTS’ failure to provide PLAINTIFF and the
8 CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
9 DEFENDANTS’ business records. As a result of their rigorous work schedules and
10 DEFENDANTS’ inadequate staffing, PLAINTIFF and other members of the CALIFORNIA
11 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
12 DEFENDANTS’ strict corporate policy and practice.

13 **B. Rest Period Violations**

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

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

3 **C. Unreimbursed Business Expenses**

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

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

26 **D. Wage Statement Violations**

27 22. California Labor Code Section 226 required an employer to furnish its employees
28 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours

1 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
2 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
3 name of the employee and only the last four digits of the employee's social security number or an
4 employee identification number other than a social security number, (8) the name and address of
5 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
6 period and the corresponding number of hours worked at each hourly rate by the employee.

7 23. From time to time during the CLASS PERIOD, when PLAINTIFF and other
8 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
9 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS
10 also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
11 accurate wage statements which failed to show, among other things, all deductions, the total hours
12 worked and all applicable hourly rates in effect during the pay period and the corresponding
13 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
14 meal and rest periods. Further, DEFENDANTS from time to time issued wage statements to
15 PLAINTIFF and other CALIFORNIA CLASS Members that failed to provide the accurate name
16 and address of the legal entity of the employer, in violation of Cal. Lab. Code § 226(a)(8).
17 Additionally, DEFENDANTS from time to time issued wage statements to PLAINTIFF and other
18 CALIFORNIA CLASS Members that failed to provide the accurate total hours worked, in
19 violation of Cal. Lab. Code § 226(a)(2).

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

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

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

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

5 27. During the CLASS PERIOD, from time-to-time DEFENDANTS required
6 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
7 work, including but not limited to, time spent receiving and responding to work-related
8 communications on their personal cell phones. This resulted in PLAINTIFF and other members
9 of the CALIFORNIA CLASS to have to work while off-the-clock.

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

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

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

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

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

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

1 34. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
2 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and
3 benefit for the time spent working while off-the-clock, including but not limited to, time spent
4 receiving and responding to work-related communications on their personal cell phones.
5 DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members of the
6 CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is
7 evidenced by DEFENDANTS' business records.

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

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

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

23 37. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
24 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
25 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
26 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
27 paid on an hourly basis with bonus compensation when the employees met the various
28 performance goals set by DEFENDANTS.

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

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

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1 **G. Sick Pay Violations**

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

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

14 **H. Unlawful Deductions**

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

19 **I. Timekeeping Manipulation**

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

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

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

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

17 **J. Unlawful Rounding Practices**

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

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

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

K. Violations for Untimely Payment of Wages

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

50. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods. PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to provide PLAINTIFF with a second off-duty meal period each workday in which she was required by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF with a rest break, they required PLAINTIFF to remain on premises, on-duty and on-call for the rest break. DEFENDANTS policy caused PLAINTIFF to remain on premises, on-call and on-duty during what was supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to the use of her personal cell phone and personal vehicle, on behalf of and in furtherance of her

1 employment with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF
2 the minimum, overtime and double time compensation still owed to her or any penalty wages
3 owed to her under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually
4 does not exceed the sum or value of \$75,000.

5 **CLASS ACTION ALLEGATIONS**

6 51. PLAINTIFF brings this Class Action on behalf of herself, and a California class
7 defined as all persons who are or previously were employed by Defendant BestDrive and/or
8 Defendant Continental Automotive Systems in California and classified as non-exempt
9 employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years
10 prior to the filing of the original Complaint and ending on the date as determined by the Court
11 (the “CLASS PERIOD”).

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

18 53. The members of the class are so numerous that joinder of all class members is
19 impractical.

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

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

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

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

1 57. PLAINTIFF will fairly and adequately represent and protect the interests of the
2 CALIFORNIA CLASS Members.

3 58. PLAINTIFF retained able class counsel with extensive experience in class action
4 litigation.

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

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

11 61. 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 62. 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
18 the 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.

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

FIRST CAUSE OF ACTION

Unlawful Business Practices

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

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

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

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

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

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

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

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

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

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

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

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

1 73. PLAINTIFF further demands on behalf of herself 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 74. By and through the unlawful and unfair business practices described herein,
5 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
6 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
7 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
8 detriment of these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS
9 to unfairly compete against competitors who comply with the law.

10 75. 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 76. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
16 and do, seek such relief as may be necessary to restore to them the money and property which
17 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
18 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
19 business practices, including earned but unpaid wages for all time worked.

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

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

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

3 **SECOND CAUSE OF ACTION**

4 **Failure To Pay Minimum Wages**

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

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

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

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

14 80. 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 81. 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 82. 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 83. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
22 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
23 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
24 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
25 the CALIFORNIA CLASS.

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

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

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

12 87. During the CLASS PERIOD, PLAINTIFF 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 88. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
16 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
17 time they worked, PLAINTIFF 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 89. DEFENDANTS knew or should have known that PLAINTIFF and the other
21 members of the CALIFORNIA CLASS were under-compensated for their time worked.
22 DEFENDANTS 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 DEFENDANTS perpetrated this systematic scheme by refusing to pay
25 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
26 for their time worked.

27 90. 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, DEFENDANTS acted and continues to act
2 intentionally, oppressively, and maliciously toward PLAINTIFF 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 91. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
8 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
9 assessment of any statutory penalties against DEFENDANTS, 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, DEFENDANTS' 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. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good
16 faith. Further, PLAINTIFF 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 PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

25 93. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
26 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
27 Industrial Welfare Commission requirements for DEFENDANTS' 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 94. 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 95. 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 96. 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.

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

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

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

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

4 101. 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 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
7 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 PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA CLASS based on
10 DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
11 California.

12 102. During the CLASS PERIOD, PLAINTIFF 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.

15 103. DEFENDANTS failed to accurately pay PLAINTIFF 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 PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
19 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANTS
20 failed to accurately record and pay as evidenced by DEFENDANTS' business records and
21 witnessed by employees.

22 104. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
23 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
24 amount of overtime they worked, PLAINTIFF 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.

27 105. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were undercompensated for their time worked.

1 DEFENDANTS 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 DEFENDANTS perpetrated this systematic scheme by refusing to pay
4 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for
5 their overtime worked.

6 106. 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, DEFENDANTS acted and continue to act
9 intentionally, oppressively, and maliciously toward PLAINTIFF 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.

14 107. Therefore, PLAINTIFF 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 DEFENDANTS, 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, DEFENDANTS' 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. DEFENDANTS' conduct as alleged herein was willful, intentional,
22 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are
23 entitled to seek and recover statutory costs.

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

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

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code § 226)**

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

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

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

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

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

119. Further, from time to time, DEFENDANTS included Meal Premium hours into the computation of total hours worked for purposes of Cal. Lab. Code §226(a)(2), notwithstanding the fact that Meal Premium hours are not considered hours worked. DEFENDANTS' inclusion of Meal Premium hours into the total hours worked in itemized wage statements issued to PLAINTIFFS and other CALIFORNIA CLASS Members violates Cal. Lab. Code §226(a)(2

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

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

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

6 **SEVENTH CAUSE OF ACTION**

7 **Failure To Pay Wages When Due**

8 **(Cal. Lab. Code § 203)**

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

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

13 123. Cal. Lab. Code § 200 provides that:

14 As used in this article:

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

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

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

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

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

3 127. Cal. Lab. Code § 203 provides:

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

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

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

15 **EIGHTH CAUSE OF ACTION**

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

17 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

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

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

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

NINTH CAUSE OF ACTION

FAILURE TO PROVIDE SICK PAY AND FAILURE TO PROVIDE PAID SICK LEAVE BALANCE

(Cal. Lab. Code § 246, *et seq.*)

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

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

135. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section."

136. Further, Cal. Labor Code Sections 246 (b)-(d) provide:

1 (b)(1) An employee shall accrue paid sick days at the rate of not less than one hour
2 per every 30 hours worked, beginning at the commencement of employment or the
operative date of this article, whichever is later, subject to the use and accrual
limitations set forth in this section.

3 (2) An employee who is exempt from overtime requirements as an
4 administrative, executive, or professional employee under a wage order of
the Industrial Welfare Commission is deemed to work 40 hours per
5 workweek for the purposes of this section, unless the employee's normal
workweek is less than 40 hours, in which case the employee shall accrue
6 paid sick days based upon that normal workweek.

7 (3) An employer may use a different accrual method, other than providing
one hour per every 30 hours worked, provided that the accrual is on a regular
8 basis so that an employee has no less than 24 hours of accrued sick leave or
paid time off by the 120th calendar day of employment or each calendar
9 year, or in each 12-month period.

10 (4) An employer may satisfy the accrual requirements of this section by
11 providing not less than 24 hours or three days of paid sick leave that is
available to the employee to use by the completion of the employee's 120th
12 calendar day of employment.

13 (c) An employee shall be entitled to use accrued paid sick days beginning on the
14 90th day of employment, after which day the employee may use paid sick days as
they are accrued.

15 (d) Accrued paid sick days shall carry over to the following year of employment.
16 However, an employer may limit an employee's use of accrued paid sick days to
24 hours or three days in each year of employment, calendar year, or 12-month
17 period. This section shall be satisfied and no accrual or carryover is required if the
full amount of leave is received at the beginning of each year of employment,
18 calendar year, or 12-month period. The term "full amount of leave" means three
19 days or 24 hours.

20 137. From time to time, DEFENDANT failed to have a policy or practice that provided
21 PLAINTIFF and other members of the CALIFORNIA CLASS with paid sick days and/or sick pay.

22 138. Cal. Labor Code Sections 246(I)(1) mandates that "[p]aid sick time for nonexempt
23 employees shall be calculated in the same manner as the regular rate of pay for the workweek in
24 which the employee uses paid sick time, whether or not the employee actually works overtime in
25 that workweek."

26 139. From time-to-time, during the PLAINTIFF and other members of the
27 CALIFORNIA CLASS were compensated at an hourly rate plus either non-discretionary incentive
28 pay. As a matter of law, the incentive compensation and/or piece-rate compensation received by

1 PLAINTIFF and other members of the CALIFORNIA CLASS must be included in the “regular
2 rate of pay.”

3 140. From time-to-time during the CLASS PERIOD, in those pay periods where
4 PLAINTIFF and other members of the CALIFORNIA CLASS earned hourly compensation and
5 either non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to
6 properly calculate the regular rate of pay for purposes of compensating paid sick time by omitting
7 non-discretionary incentive pay from the regular rate of pay.

8 141. DEFENDANT’s uniform policy and practice of omitting non-discretionary
9 incentive pay and/or piece-rate pay from the regular rate of pay for purposes of paying paid sick
10 pay, resulted in the underpayment of sick pay wages to PLAINTIFF and other members of the
11 CALIFORNIA CLASS. PLAINTIFF and other members of the CALIFORNIA CLASS therefore
12 request recovery of all unpaid wages, including sick pay wages, according to proof, interest,
13 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
14 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
15 overtime compensation is determined to be owed to other members of the CALIFORNIA CLASS
16 who have terminated their employment, DEFENDANT’s conduct also violates Labor Code §§
17 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
18 Cal. Lab. Code § 203, which penalties are sought herein on behalf of other members of the
19 CALIFORNIA CLASS. DEFENDANT’S conduct as alleged herein was willful, intentional and
20 not in good faith. Further, PLAINTIFF and other members of the CALIFORNIA CLASS are
21 entitled to seek and recover statutory costs.

22 142. Cal. Lab. Code § 246(i) provides that:

23 An employer shall provide an employee with written notice that sets forth the
24 amount of paid sick leave available, or paid time off leave an employer provides in
25 lieu of sick leave, for use on either the employee’s itemized wage statement
26 described in Section 226 or in a separate writing provided on the designated pay
27 date with the employee’s payment of wages. If an employer provides unlimited paid
28 sick leave or unlimited paid time off to an employee, the employer may satisfy this
section by indicating on the notice or the employee’s itemized wage statement
“unlimited.”

1 143. From time to time, DEFENDANT failed to furnish PLAINTIFF and other members
2 of the CALIFORNIA CLASS with written wage statements setting forth the amount of paid sick
3 leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.* As a result, PLAINTIFF
4 and other members of the CALIFORNIA CLASS are entitled to seek and recover statutory costs.

5 **TENTH CAUSE OF ACTION**

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

7 **(Cal. Lab. Code §§2698 et seq.)**

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

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

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

20 146. PLAINTIFF, and such persons that may be added from time to time who satisfy
21 the requirements and exhaust the administrative procedures under the Private Attorney General
22 Act, bring this Representative Action on behalf of the State of California with respect to herself
23 and all individuals classified as all non-exempt employees who worked for Defendant BestDrive
24 and/or Defendant Continental Automotive Systems in California during the time period of June 2,
25 2022, until the present (the "AGGRIEVED EMPLOYEES").

26 147. On June 2, 2023, PLAINTIFF gave written notice by certified mail to the Labor
27 and Workforce Development Agency (the "Agency") and the employer of the specific provisions
28 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1,

1 attached hereto and incorporated by this reference herein. The statutory waiting period for
2 Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section
3 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to Section
4 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as
5 herein defined.

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

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

26 150. To the extent that any of the conduct and violations alleged herein did not affect
27 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
28 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30

1 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
2 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor
3 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
4 committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

5 **PRAYER FOR RELIEF**

6 WHEREFORE, PLAINTIFF prays 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 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
13 c. An order requiring DEFENDANTS to pay all overtime wages and all sums
14 unlawfully withheld from compensation due to PLAINTIFF and the other members
15 of the CALIFORNIA CLASS; and
16 d. Restitutionary disgorgement of DEFENDANTS’ ill-gotten gains into a fluid fund
17 for restitution of the sums incidental to DEFENDANTS’ violations due to
18 PLAINTIFF 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, Eighth and
21 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
22 pursuant 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 PLAINTIFF and the other members of
25 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 PLAINTIFF 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;
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1 4. On all claims:

- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and
- 4 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
- 5 including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or
- 6 § 1194.

7

8

9 DATED: August 10, 2023

ZAKAY LAW GROUP, APLC

10 By: 
11 Shani O. Zakay, Esq.
12 Attorney for PLAINTIFFS

13

14

15 **DEMAND FOR A JURY TRIAL**

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

17

18

19

20 DATED: August 10, 2023

ZAKAY LAW GROUP, APLC

21 By: 
22 Shani O. Zakay, Esq.
23 Attorney for PLAINTIFFS

24

25

26

27

28

EXHIBIT 1

June 2, 2023

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

BESTDRIVE, LLC

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

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0625 6785 68

CONTINENTAL AUTOMOTIVE SYSTEMS, INC.

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

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0625 6786 05

CONTINENTAL TIRE THE AMERICAS, LLC

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

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0625 6785 99

CONTITECH NORTH AMERICA, INC.

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

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0625 6785 82

CONTITECH USA, INC.

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

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0625 6785 75

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

Dear Sir/Madam:

Our offices represent Plaintiff CHRISSY CLEVELAND ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendants BESTDRIVE, LLC ("Defendant BestDrive"), CONTINENTAL AUTOMOTIVE SYSTEMS, INC. ("Defendant Continental Automotive

Systems”), CONTINENTAL TIRE THE AMERICAS, LLC (“Defendant Continental Tire”), CONTITECH NORTH AMERICA, INC. (“Defendant Contitech North America”), and CONTITECH USA, INC. (“Defendant Contitech USA”) (collectively, hereinafter, “Defendants”). Plaintiff was employed by Defendants from March of 2020 to June of 2022, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

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

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant BestDrive and/or Defendant Continental Automotive Systems and/or Defendant Continental Tire and/or Defendant Contitech North America and/or Defendant Contitech USA in California during the relevant claim period.

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

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

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

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

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

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in dark ink, appearing to read 'JCL', followed by a long, horizontal, slightly wavy line.

Jean-Claude Lapuyade, Esq.

EXHIBIT 1

ZAKAY LAW GROUP, APLC
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Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN BERNARDINO

CHRISSY CLEVELAND, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiff,

v.

BESTDRIVE, LLC, a Delaware limited
liability company; CONTINENTAL
AUTOMOTIVE SYSTEMS, INC., a Delaware
corporation; CONTINENTAL TIRE THE
AMERICAS, LLC, an Ohio limited liability
company; CONTITECH NORTH AMERICA,
INC., a Delaware corporation; CONTITECH
USA, INC., a Delaware corporation; and DOES
1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

- 1 6) FAILURE TO PROVIDE ACCURATE
2 ITEMIZED STATEMENTS IN
3 VIOLATION OF CAL. LAB. CODE § 226;
4 7) FAILURE TO PROVIDE WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203;
7 8) FAILURE TO REIMBURSE EMPLOYEES
8 FOR REQUIRED EXPENSES IN
9 VIOLATION OF CAL. LAB. CODE § 2802;
10 9) FAILURE TO PROVIDE SICK PAY AND
11 FAILURE TO PROVIDE PAID SICK
12 LEAVE BALANCE IN VIOLATION OF
13 CAL. LAB. CODE §§ 246, *et seq.*

14 **DEMAND FOR A JURY TRIAL**

15 PLAINTIFF CHRISSY CLEVELAND (“PLAINTIFF”), an individual, on behalf of herself
16 and all other similarly situated current and former employees, alleges on information and belief,
17 except for her own acts and knowledge which are based on personal knowledge, the following:

18 **PRELIMINARY ALLEGATIONS**

19 1. Defendant BESTDRIVE, LLC (“Defendant BestDrive”) is a Delaware limited
20 liability company at all relevant times mentioned herein conducted and continues to conduct
21 substantial and regular business throughout California.

22 2. Defendant CONTINENTAL AUTOMOTIVE SYSTEMS, INC. (“Defendant
23 Continental Automotive Systems”) is a Delaware corporation that at all relevant times mentioned
24 herein conducted and continues to conduct substantial and regular business throughout California.

25 3. Defendant CONTINENTAL TIRE THE AMERICAS, LLC (“Defendant
26 Continental Tire”) is an Ohio limited liability company that at all relevant times mentioned herein
27 conducted and continues to conduct substantial and regular business throughout California.

28 4. Defendant CONTITECH NORTH AMERICA, INC. (“Defendant Contitech North
America”) is a Delaware corporation that at all relevant times mentioned herein conducted and
continues to conduct substantial and regular business throughout California.

5. Defendant CONTITECH USA, INC. (“Defendant Contitech USA”) is a Delaware
corporation that at all relevant times mentioned herein conducted and continues to conduct

1 substantial and regular business throughout California.

2 6. Defendant BestDrive, Defendant Continental Automotive Systems, Defendant
3 Continental Tire, Defendant Contitech North America and Defendant Contitech USA were the
4 joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the
5 company PLAINTIFF performed work for respectively and are therefore jointly responsible as
6 employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

7 7. DEFENDANTS own, operate, and/or manage tire centers throughout the state of
8 California, including in the county of San Bernardino, where PLAINTIFF worked.

9 8. PLAINTIFF was employed by DEFENDANTS in California from March of 2020
10 to June of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to the legally
11 required meal and rest periods and payment of minimum and overtime wages due for all time
12 worked.

13 9. PLAINTIFF brings this Class Action on behalf of herself and a California class,
14 defined as all persons who are or previously were employed by Defendant BestDrive and/or
15 Defendant Continental Automotive Systems and/or Defendant Continental Tire and/or Defendant
16 Contitech North America and/or Defendant Contitech USA in California and classified as non-
17 exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four
18 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
19 (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of the
20 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

21 10. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
22 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
23 the CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice which failed to
24 lawfully compensate these employees. DEFENDANTS’ uniform policy and practice alleged
25 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANTS retained
26 and continue to retain wages due PLAINTIFF and the other members of the CALIFORNIA
27 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
28 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and

1 the other members of the CALIFORNIA CLASS who have been economically injured by
2 DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable
3 relief.

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

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

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

27 14. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
28 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,

1 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
2 employee a wage less than the minimum fixed by California state law, and as such, are subject to
3 civil penalties for each underpaid employee.

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

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

12 **JURISDICTION AND VENUE**

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

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

21 **THE CONDUCT**

22 19. In violation of the applicable sections of the California Labor Code and the
23 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
24 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
25 failed to provide legally compliant meal and rest periods, failed to accurately compensate
26 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
27 periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all
28 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF

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

14 **A. Meal Period Violations**

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

21. From time to time during the CLASS PERIOD, as a result of their rigorous work schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these employees are required by DEFENDANTS to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed "on-duty" meal period exception. When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on premises, on duty and on call. Further, from time to time, DEFENDANT required PLAINTIFFS and other CALIFORNIA CLASS Members to maintain cordless communication devices in order to receive and/or respond to work-related communications during their off-duty meal periods. DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by DEFENDANTS' business records. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

B. Rest Period Violations

22. From time to time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and DEFENDANTS' inadequate staffing. Further, for the same reasons, 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 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, PLAINTIFF and other CALIFORNIA
4 CLASS Members were, from time to time, required to remain on premises, on duty and/or on call.
5 Further, from time to time, DEFENDANT required PLAINTIFFS and other CALIFORNIA
6 CLASS Members to maintain cordless communication devices in order to receive and/or respond
7 to work-related communications during their off-duty rest periods. PLAINTIFF and other
8 CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As
9 a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF
10 and other CALIFORNIA CLASS Members were from time to time denied their proper rest
11 periods by DEFENDANT and DEFENDANTS' managers.

12 **C. Unreimbursed Business Expenses**

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

24 24. In the course of their employment, DEFENDANTS required PLAINTIFF and
25 other CALIFORNIA CLASS Members to incur personal expenses for the maintenance of their
26 uniforms as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
27 CALIFORNIA CLASS Members were required to use their personal cell phones and personal
28 vehicles in order to perform work and work-related tasks for DEFENDANTS. However,

1 DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
2 Members for the use of their personal cell phones and personal vehicles. As a result, in the course
3 of their employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS
4 Members incurred unreimbursed business expenses that included, but were not limited to, costs
5 related to the use of their personal cell phones and personal vehicles, all on behalf of and for the
6 benefit of DEFENDANT.

7 **D. Wage Statement Violations**

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

16 26. From time to time during the CLASS PERIOD, when PLAINTIFF and other
17 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
18 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS
19 also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
20 accurate wage statements which failed to show, among other things, all deductions, the total hours
21 worked and all applicable hourly rates in effect during the pay period and the corresponding
22 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
23 meal and rest periods. Further, DEFENDANTS from time to time issued wage statements to
24 PLAINTIFF and other CALIFORNIA CLASS Members that failed to provide the accurate name
25 and address of the legal entity of the employer, in violation of Cal. Lab. Code § 226(a)(8).
26 Additionally, DEFENDANTS from time to time issued wage statements to PLAINTIFF and other
27 CALIFORNIA CLASS Members that failed to provide the accurate total hours worked, in
28 violation of Cal. Lab. Code § 226(a)(2).

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

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

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

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

12 30. During the CLASS PERIOD, from time-to-time DEFENDANTS required
13 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
14 work, including but not limited to, time spent receiving and responding to work-related
15 communications on their personal cell phones. This resulted in PLAINTIFF and other members
16 of the CALIFORNIA CLASS to have to work while off-the-clock.

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

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

22 33. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
23 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
24 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
25 wages earned and owed for all the work they performed.

26 34. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
27 exempt employees, subject to the requirements of the California Labor Code.
28

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

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

9 37. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
10 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and
11 benefit for the time spent working while off-the-clock, including but not limited to, time spent
12 receiving and responding to work-related communications on their personal cell phones.
13 DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members of the
14 CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is
15 evidenced by DEFENDANTS' business records.

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

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

27 39. State law provides that employees must be paid overtime at one-and-one-half times
28 their "regular rate of pay." PLAINTIFF and other CALIFORNIA 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 40. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
4 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
5 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
6 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
7 paid on an hourly basis with bonus compensation when the employees met the various
8 performance goals set by DEFENDANTS.

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

27 42. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a

1 matter of company policy, practice, and procedure, intentionally and knowingly failed to
2 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
3 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
4 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain
5 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
6 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANTS, the
7 CLASS PERIOD should be adjusted accordingly.

8 **G. Sick Pay Violations**

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

16 44. California Labor Code Section 246(i) requires an employer to furnish its
17 employees with written wage statements setting forth the amount of paid sick leave available.
18 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
19 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
20 forth the amount of paid sick leave available.

21 **H. Unlawful Deductions**

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

26 **I. Timekeeping Manipulation**

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

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

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

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

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

24 **J. Unlawful Rounding Practices**

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

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

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

15 **K. Violations for Untimely Payment of Wages**

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

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

1 call and on-duty during what was supposed to be her off-duty meal periods. PLAINTIFF
2 therefore forfeited meal and rest breaks without additional compensation and in accordance with
3 DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided
4 PLAINTIFF with paystubs that failed to comply with Cal. Lab. Code § 226. Further,
5 DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to
6 the use of her personal cell phone and personal vehicle, on behalf of and in furtherance of her
7 employment with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF
8 the minimum, overtime and double time compensation still owed to her or any penalty wages
9 owed to her under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually
10 does not exceed the sum or value of \$75,000.

11 **CLASS ACTION ALLEGATIONS**

12 54. PLAINTIFF brings this Class Action on behalf of herself, and a California class
13 defined as all persons who are or previously were employed by Defendant BestDrive and/or
14 Defendant Continental Automotive Systems and/or Defendant Continental Tire and/or Defendant
15 Contitech North America and/or Defendant Contitech USA in California and classified as non-
16 exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four
17 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
18 (the "CLASS PERIOD").

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

25 56. The members of the class are so numerous that joinder of all class members is
26 impractical.

27 57. Common questions of law and fact regarding DEFENDANTS' conduct, including
28 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately

1 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
2 regular rate of compensation for missed meal and rest period premiums, failing to provide legally
3 compliant meal and rest periods, failure to reimburse for business expenses, failure to provide
4 accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum
5 wage and overtime, exist as to all members of the class and predominate over any questions
6 affecting solely any individual members of the class. Among the questions of law and fact
7 common to the class are:

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

1 j. Whether DEFENDANT committed an act of unfair competition in violation of the
2 UCL, by failing to provide the PLAINTIFF and the other members of the
3 CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

8 60. PLAINTIFF will fairly and adequately represent and protect the interests of the
9 CALIFORNIA CLASS Members.

10 61. PLAINTIFF retained able class counsel with extensive experience in class action
11 litigation.

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

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

18 64. 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 65. 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
25 the 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 66. 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 PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

20 69. 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 70. By the conduct alleged herein, DEFENDANTS have engaged and continue 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, 558, 1194, 1197, 1197.1, 1198, and
5 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 71. By the conduct alleged herein, DEFENDANTS' practices were unlawful and
9 unfair in that these practices violated public policy, were immoral, unethical, oppressive
10 unscrupulous or substantially injurious to employees, and were without valid justification or
11 utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203
12 of the California Business & Professions Code, including restitution of wages wrongfully
13 withheld.

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

23 73. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
24 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
25 other members of the CALIFORNIA CLASS to be underpaid during their employment with
26 DEFENDANTS.

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

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

3 75. Therefore, PLAINTIFF demands on behalf of herself 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 76. PLAINTIFF further demands on behalf of herself 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 77. By and through the unlawful and unfair business practices described herein,
12 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF 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 DEFENDANTS so as to allow DEFENDANTS
16 to unfairly compete against competitors who comply with the law.

17 78. 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 79. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
23 and do, seek such relief as may be necessary to restore to them the money and property which
24 DEFENDANTS have acquired, or of which PLAINTIFF 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 80. PLAINTIFF 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 DEFENDANTS from
2 engaging in any unlawful and unfair business practices in the future.

3 PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
4 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, PLAINTIFF and the other
7 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
8 and economic harm unless DEFENDANTS are 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 PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

21 83. 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 84. 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 85. 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 86. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
2 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
3 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
4 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
5 the CALIFORNIA CLASS.

6 87. DEFENDANTS' 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 PLAINTIFF
9 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

10 88. In committing these violations of the California Labor Code, DEFENDANTS
11 inaccurately calculated the correct time worked and consequently underpaid the actual time
12 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS 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 89. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
17 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
18 minimum wage compensation for their time worked for DEFENDANTS.

19 90. During the CLASS PERIOD, PLAINTIFF 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 91. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
23 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
24 time they worked, PLAINTIFF 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 92. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were under-compensated for their time worked.

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

6 93. 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, DEFENDANTS acted and continues to act
9 intentionally, oppressively, and maliciously toward PLAINTIFF 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 94. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
15 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
16 assessment of any statutory penalties against DEFENDANTS, 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, DEFENDANTS' 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. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good
23 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
24 recover statutory costs.

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1 **THIRD CAUSE OF ACTION**

2 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

22 100. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
23 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
24 they worked, including overtime work.

25 101. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
26 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
27 implementing a uniform policy and practice that failed to accurately record overtime worked by
28 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to

1 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
2 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
3 (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

21 105. During the CLASS PERIOD, PLAINTIFF and the other members of the
22 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
23 a failure to pay all earned wages.

24 106. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of
25 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
26 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
27 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
28 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANTS

1 failed to accurately record and pay as evidenced by DEFENDANTS' business records and
2 witnessed by employees.

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

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

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

23 110. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
24 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
25 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
26 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
27 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
28 employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore

1 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
2 penalties are sought herein. DEFENDANTS' conduct as alleged herein was willful, intentional,
3 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are
4 entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

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

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

27 117. DEFENDANTS further violated California Labor Code §§ 226.7 and the
28 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS

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

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

SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

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

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

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

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

employee identification number other than social security number may be shown on the itemized statement,

h. the name and address of the legal entity that is the employer, and

i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

122. Further, from time to time, DEFENDANTS included Meal Premium hours into the computation of total hours worked for purposes of Cal. Lab. Code §226(a)(2), notwithstanding the fact that Meal Premium hours are not considered hours worked. DEFENDANTS' inclusion of Meal Premium hours into the total hours worked in itemized wage statements issued to PLAINTIFFS and other CALIFORNIA CLASS Members violates Cal. Lab. Code §226(a)(2)

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

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

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

6 **SEVENTH CAUSE OF ACTION**

7 **Failure To Pay Wages When Due**

8 **(Cal. Lab. Code § 203)**

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

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

13 126. Cal. Lab. Code § 200 provides that:

14 As used in this article:

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

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

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

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

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

130. Cal. Lab. Code § 203 provides:

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

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

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

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees for Required Expenses

(Cal. Lab. Code §§ 2802)

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

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

134. 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.

135. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANTS’

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

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

NINTH CAUSE OF ACTION

FAILURE TO PROVIDE SICK PAY AND FAILURE TO PROVIDE PAID SICK LEAVE BALANCE

(Cal. Lab. Code § 246, *et seq.*)

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

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

138. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section."

139. Further, Cal. Labor Code Sections 246 (b)-(d) provide:

1 (b)(1) An employee shall accrue paid sick days at the rate of not less than one hour
2 per every 30 hours worked, beginning at the commencement of employment or the
operative date of this article, whichever is later, subject to the use and accrual
limitations set forth in this section.

3 (2) An employee who is exempt from overtime requirements as an
4 administrative, executive, or professional employee under a wage order of
the Industrial Welfare Commission is deemed to work 40 hours per
5 workweek for the purposes of this section, unless the employee's normal
workweek is less than 40 hours, in which case the employee shall accrue
6 paid sick days based upon that normal workweek.

7 (3) An employer may use a different accrual method, other than providing
one hour per every 30 hours worked, provided that the accrual is on a regular
8 basis so that an employee has no less than 24 hours of accrued sick leave or
paid time off by the 120th calendar day of employment or each calendar
9 year, or in each 12-month period.

10 (4) An employer may satisfy the accrual requirements of this section by
11 providing not less than 24 hours or three days of paid sick leave that is
available to the employee to use by the completion of the employee's 120th
12 calendar day of employment.

13 (c) An employee shall be entitled to use accrued paid sick days beginning on the
14 90th day of employment, after which day the employee may use paid sick days as
they are accrued.

15 (d) Accrued paid sick days shall carry over to the following year of employment.
16 However, an employer may limit an employee's use of accrued paid sick days to
24 hours or three days in each year of employment, calendar year, or 12-month
17 period. This section shall be satisfied and no accrual or carryover is required if the
full amount of leave is received at the beginning of each year of employment,
18 calendar year, or 12-month period. The term "full amount of leave" means three
19 days or 24 hours.

20 140. From time to time, DEFENDANT failed to have a policy or practice that provided
21 PLAINTIFF and other members of the CALIFORNIA CLASS with paid sick days and/or sick pay.

22 141. Cal. Labor Code Sections 246(I)(1) mandates that "[p]aid sick time for nonexempt
23 employees shall be calculated in the same manner as the regular rate of pay for the workweek in
24 which the employee uses paid sick time, whether or not the employee actually works overtime in
25 that workweek."

26 142. From time-to-time, during the PLAINTIFF and other members of the
27 CALIFORNIA CLASS were compensated at an hourly rate plus either non-discretionary incentive
28 pay. As a matter of law, the incentive compensation and/or piece-rate compensation received by

1 PLAINTIFF and other members of the CALIFORNIA CLASS must be included in the “regular
2 rate of pay.”

3 143. From time-to-time during the CLASS PERIOD, in those pay periods where
4 PLAINTIFF and other members of the CALIFORNIA CLASS earned hourly compensation and
5 either non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to
6 properly calculate the regular rate of pay for purposes of compensating paid sick time by omitting
7 non-discretionary incentive pay from the regular rate of pay.

8 144. DEFENDANT’s uniform policy and practice of omitting non-discretionary
9 incentive pay and/or piece-rate pay from the regular rate of pay for purposes of paying paid sick
10 pay, resulted in the underpayment of sick pay wages to PLAINTIFF and other members of the
11 CALIFORNIA CLASS. PLAINTIFF and other members of the CALIFORNIA CLASS therefore
12 request recovery of all unpaid wages, including sick pay wages, according to proof, interest,
13 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
14 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
15 overtime compensation is determined to be owed to other members of the CALIFORNIA CLASS
16 who have terminated their employment, DEFENDANT’s conduct also violates Labor Code §§
17 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
18 Cal. Lab. Code § 203, which penalties are sought herein on behalf of other members of the
19 CALIFORNIA CLASS. DEFENDANT’S conduct as alleged herein was willful, intentional and
20 not in good faith. Further, PLAINTIFF and other members of the CALIFORNIA CLASS are
21 entitled to seek and recover statutory costs.

22 145. Cal. Lab. Code § 246(i) provides that:

23 An employer shall provide an employee with written notice that sets forth the
24 amount of paid sick leave available, or paid time off leave an employer provides in
25 lieu of sick leave, for use on either the employee’s itemized wage statement
26 described in Section 226 or in a separate writing provided on the designated pay
27 date with the employee’s payment of wages. If an employer provides unlimited paid
28 sick leave or unlimited paid time off to an employee, the employer may satisfy this
section by indicating on the notice or the employee’s itemized wage statement
“unlimited.”

1 146. From time to time, DEFENDANT failed to furnish PLAINTIFF and other members
2 of the CALIFORNIA CLASS with written wage statements setting forth the amount of paid sick
3 leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.* As a result, PLAINTIFF
4 and other members of the CALIFORNIA CLASS are entitled to seek and recover statutory costs.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, PLAINTIFF prays 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 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
13 c. An order requiring DEFENDANTS to pay all overtime wages and all sums
14 unlawfully withheld from compensation due to PLAINTIFF and the other members
15 of the CALIFORNIA CLASS; and
16 d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
17 for restitution of the sums incidental to DEFENDANTS' violations due to
18 PLAINTIFF 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, Eighth and
21 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
22 pursuant 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 PLAINTIFF and the other members of
25 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;

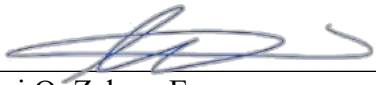
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
- e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On all claims:

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

DATED: June 2, 2023

ZAKAY LAW GROUP, APLC

By: 

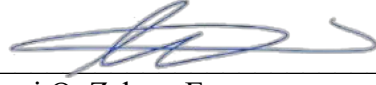
Shani O. Zakay, Esq.
Attorney for PLAINTIFFS

DEMAND FOR A JURY TRIAL

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

DATED: June 2, 2023

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay, Esq.
Attorney for PLAINTIFFS