

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

MENZIES AVIATION (USA) INC., a Delaware corporation;

[Additional Parties Attachment Form is Attached]

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ROBERT MORRIS III, an individual, in his representative capacity on behalf of the State of California and fellow Aggrieved Employees,

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Los Angeles Superior Court - Torrance Courthouse
825 Maple Avenue
Torrance, CA 90503

CASE NUMBER: 23TRCV02137
(Número del Caso):

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

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

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 07/03/2023
(Fecha)

David W. Slayton, Executive Officer/Clerk of Court

Clerk, by J. Pollock, Deputy
(Secretario) (Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):

[SEAL]



SHORT TITLE:

Morris III v. Menzies Aviation (USA) INC., et al.

CASE NUMBER:

23TRCV02137

INSTRUCTIONS FOR USE

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

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

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

AIRCRAFT SERVICE INTERNATIONAL, INC., a Delaware corporation; AIR MENZIES INTERNATIONAL (USA) INC., a Delaware corporation; and DOES 1-50, Inclusive,

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Superior Court of California,
County of Los Angeles
7/03/2023 11:23 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Pollock, Deputy Clerk

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ROBERT MORRIS III, an individual, in his
representative capacity on behalf of the State of
California and fellow Aggrieved Employees,

Plaintiff,

v.

MENZIES AVIATION (USA) INC., a
Delaware corporation; AIRCRAFT SERVICE
INTERNATIONAL, INC., a Delaware
corporation; AIR MENZIES
INTERNATIONAL (USA) INC., a Delaware
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: **23TRCV02137**

REPRESENTATIVE ACTION
COMPLAINT FOR:

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

1 Plaintiff ROBERT MORRIS III (“PLAINTIFF” or “PLAINTIFFS”), an individual, in his
2 representative capacity on behalf of the State of California and fellow Aggrieved Employees, acting
3 as private attorney generals under the Labor Code Private Attorney General Act of 2004, § 2699, *et*
4 *seq.* (“PAGA”) only, allege on information and belief, except for his own acts and knowledge which
5 are based on personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against MENZIES AVIATION (USA) INC.,
8 AIRCRAFT SERVICE INTERNATIONAL, INC., and AIR MENZIES INTERNATIONAL
9 (USA) INC. (“DEFENDANT” and/or “DEFENDANTS”) seeking only to recover PAGA civil
10 penalties for himself, and on behalf of all current and former aggrieved employees that worked
11 for DEFENDANT. PLAINTIFF do **not seek to recover anything other than penalties as**
12 **permitted by California Labor Code § 2699**. To the extent that statutory violations are
13 mentioned for wage violations, PLAINTIFFS do not seek underlying general and/or special
14 damages for those violations in this action, but simply the civil penalties permitted by California
15 Labor Code § 2699. Notwithstanding, PLAINTIFFS are not abandoning their right to pursue their
16 individual claims for, *inter alia*, Defendant’s alleged wage violations, and/or general or special
17 damages arising from those violations, and they fully intend to, at a future date, pursue claims for
18 those individual claims and damages.

19 2. California has enacted the PAGA to permit an individual to bring an action on
20 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
21 nature of this action.

22 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for
23 DEFENDANT’S violations under PAGA and solely for the relief as permitted by PAGA – that
24 is, penalties and any other relief the Court deems proper pursuant to PAGA. Nothing in this
25 complaint should be construed as attempting to obtain any relief that would not be available in a
26 PAGA-only action.

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THE PARTIES

4. Defendant MENZIES AVIATION (USA) INC. (“Defendant Menzies Aviation”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

5. Defendant AIRCRAFT SERVICE INTERNATIONAL, INC. (“Defendant Aircraft Service International”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

6. Defendant AIR MENZIES INTERNATIONAL (USA) INC. (“Defendant Air Menzies International”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

7. Defendant Menzies Aviation, Defendant Aircraft Service International and Defendant Air Menzies International 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.”

8. DEFENDANT provides aircraft services in the state of California, including in the county of Los Angeles, where PLAINTIFF worked.

9. PLAINTIFF has been employed by DEFENDANTS in California since July of 2021 as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

10. PLAINTIFF has been employed by DEFENDANTS in California since July of 2021 as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

11. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are presently unknown to PLAINTIFFS who therefore sues these DEFENDANTS by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are

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

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

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

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

24 15. PLAINTIFFS, and such persons that may be added from time to time who satisfy
25 the requirements and exhaust the administrative procedures under the Private Attorney General
26 Act, bring this Representative Action on behalf of the State of California with respect to
27 themselves and all individuals who are or previously were employed by DEFENDANT in
28

1 California (the “AGGRIEVED EMPLOYEES”) during the time period of April 21, 2022 until the
2 present (the “PAGA PERIOD”).

3 16. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
4 presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this
5 representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for
6 DEFENDANT’S violation of California Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,
7 218.6, 221, 226, 226.2, 226.3 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197,
8 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, and the applicable Wage Order(s). Based
9 upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees
10 within the meaning of Labor Code § 2699, *et seq.*

11 **JURISDICTION AND VENUE**

12 17. This Court has jurisdiction over this Action pursuant to California Code of Civil
13 Procedure, Section 410.10.

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

18 **THE CONDUCT**

19 **A. Meal Period Violations**

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

1 forfeited minimum wage and overtime compensation by regularly working without their time
2 being accurately recorded and without compensation at the applicable minimum wage and
3 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
4 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANTS' business
5 records.

6 20. From time to time during the PAGA PERIOD, as a result of their rigorous work
7 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
8 AGGRIEVED EMPLOYEES are from time to time unable to take thirty (30) minute off duty
9 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
10 AGGRIEVED EMPLOYEES are required to perform work as ordered by DEFENDANTS for
11 more than five (5) hours during some shifts without receiving a meal break. Further,
12 DEFENDANTS failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second
13 off-duty meal period for some workdays in which these employees are required by
14 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by
15 PLAINTIFF and other AGGRIEVED EMPLOYEES does not qualify for the limited and narrowly
16 construed "on-duty" meal period exception. When they were provided with meal periods,
17 PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time, required to remain
18 on duty and on call. Further, DEFENDANTS from time to time required PLAINTIFF and other
19 AGGRIEVED EMPLOYEES to maintain cordless communication devices in order to receive and
20 respond to work-related communications during what was supposed to be their off-duty meal
21 breaks. DEFENDANTS' failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES
22 with legally required meal breaks is evidenced by DEFENDANTS' business records. As a result
23 of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other
24 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation and
25 in accordance with DEFENDANTS' strict corporate policy and practice.

26 **B. Rest Period Violations**

27 21. From time to time during the PAGA PERIOD, PLAINTIFF and other
28 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without being

1 provided ten (10) minute rest periods as a result of their rigorous work requirements and
2 DEFENDANTS' inadequate staffing. Further, for the same reasons, these employees were denied
3 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
4 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
5 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
6 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
7 time to time. When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED
8 EMPLOYEES were, from time to time, required to on duty and/or on call. Further,
9 DEFENDANTS from time to time required PLAINTIFF and other AGGRIEVED EMPLOYEES
10 to maintain cordless communication devices in order to receive and respond to work-related
11 communications during what was supposed to be their off-duty rest breaks. PLAINTIFF and other
12 AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu* thereof. As a
13 result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF
14 and other AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods
15 by DEFENDANT and DEFENDANTS' managers.

16 **C. Unreimbursed Business Expenses**

17 22. DEFENDANTS as a matter of corporate policy, practice, and procedure,
18 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
19 and the other AGGRIEVED EMPLOYEES for required business expenses incurred by the
20 PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their
21 duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are
22 required to indemnify employees for all expenses incurred in the course and scope of their
23 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
24 her employee for all necessary expenditures or losses incurred by the employee in direct
25 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
26 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
27 believed them to be unlawful."
28

1 23. In the course of their employment, DEFENDANTS required PLAINTIFF and
2 other AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell
3 phones as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
4 AGGRIEVED EMPLOYEES were required to use their personal cell phones in order to perform
5 work related tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and
6 other AGGRIEVED EMPLOYEES for the use of their personal cell phones. As a result, in the
7 course of their employment with DEFENDANTS, the PLAINTIFF and other AGGRIEVED
8 EMPLOYEES incurred unreimbursed business expenses that included, but were not limited to,
9 costs related to the use of their personal cell phones, all on behalf of and for the benefit of
10 DEFENDANT.

11 **D. Wage Statement Violations**

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

20 25. From time to time during the PAGA PERIOD, when PLAINTIFF and other
21 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
22 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
23 to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage
24 statements which failed to show, among other things, all deductions, the total hours worked and
25 all applicable hourly rates in effect during the pay period and the corresponding amount of time
26 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
27 periods. Further, from time to time, DEFENDANTS issued wage statements that included items
28

1 such as vacation pay, meal break penalties, sick pay and double-counted shift differential
2 payments into the calculation for total hours worked, in violation of Cal. Lab. Code § 226(a)(2).

3 26. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
4 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with Cal.
5 Lab. Code § 226.

6 27. As a result, DEFENDANTS issued PLAINTIFF and other AGGRIEVED
7 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
8 violations are knowing and intentional, were not isolated due to an unintentional payroll error due
9 to clerical or inadvertent mistake.

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

11 28. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and
12 continues to fail to accurately pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
13 hours worked.

14 29. During the PAGA PERIOD, from time-to-time DEFENDANTS required
15 PLAINTIFF and other AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work,
16 including but not limited to, time spent fueling aircrafts, assisting with emergencies, inspecting
17 for safety issues and conducting security sweeps of the premises. This resulted in PLAINTIFF
18 and other AGGRIEVED EMPLOYEES to have to work while off-the-clock.

19 30. DEFENDANTS directed and directly benefited from the undercompensated off-
20 the-clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

21 31. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
22 assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED
23 EMPLOYEES.

24 32. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
25 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document,
26 track, or pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed
27 for all the work they performed.
28

1 33. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt
2 employees, subject to the requirements of the California Labor Code.

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

8 35. DEFENDANTS knew or should have known that PLAINTIFF and the other
9 AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.

10 36. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited
11 wages due to them for all hours worked at DEFENDANTS' direction, control, and benefit for the
12 time spent working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay
13 PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
14 applicable law is evidenced by DEFENDANTS' business records.

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

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

26 38. State law provides that employees must be paid overtime at one-and-one-half times
27 their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were
28

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

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

9 40. However, from time to time, when calculating the regular rate of pay in those pay
10 periods where PLAINTIFF and other AGGRIEVED EMPLOYEES 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 AGGRIEVED
17 EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted in
18 a systematic underpayment of overtime and double time compensation, meal and rest period
19 premium payments, and redeemed sick pay to PLAINTIFF and other AGGRIEVED
20 EMPLOYEES by DEFENDANTS. Specifically, California Labor Code Section 246 mandates
21 that 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 41. 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 AGGRIEVED EMPLOYEES at the correct rate of pay for
3 all overtime and double time worked, meal and rest period premiums, and redeemed sick pay as
4 required by California law which allowed DEFENDANTS to illegally profit and gain an unfair
5 advantage over competitors who complied with the law. To the extent equitable tolling operates
6 to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD
7 should be adjusted accordingly.

8 **G. Unlawful Deductions**

9 42. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
10 and AGGRIEVED EMPLOYEES' pay without explanations and without authorization to do so
11 or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS
12 violated Labor Code § 221.

13 **H. Timekeeping Manipulation**

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

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

26 45. The mutability of the timekeeping system also allowed DEFENDANTS to alter
27 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
28 timekeeping system so as to create the appearance that PLAINTIFF and other AGGRIEVED

1 EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were
2 not at all times provided an off-duty meal break. This practice is a direct result of
3 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
4 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

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

10 **I. Unlawful Rounding Practices**

11 47. During the PAGA PERIOD, DEFENDANTS did not have in place an immutable
12 timekeeping system to accurately record and pay PLAINTIFFS and other AGGRIEVED
13 EMPLOYEES for the actual time these employees worked each day, including overtime hours.
14 Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted
15 in PLAINTIFFS and AGGRIEVED EMPLOYEES being undercompensated for all of their time
16 worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally
17 round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS and the
18 AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time worked,
19 including the applicable overtime compensation for overtime worked. As a result, PLAINTIFFS
20 and other AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for their time
21 worked by working without their time being accurately recorded and without compensation at
22 the applicable overtime rates.

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

1 **J. Violations for Untimely Payment of Wages**

2 49. Pursuant to California Labor Code section 204, PLAINTIFF and the
3 AGGRIEVED EMPLOYEES were entitled to timely payment of wages during their
4 employment. PLAINTIFF and the AGGRIEVED EMPLOYEES, from time to time, did not
5 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
6 meal period premium wages, and rest period premium wages within permissible time period.

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

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1 **FIRST CAUSE OF ACTION**

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

3 **(Cal. Lab. Code §§2698 et seq.)**

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

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

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

16 53. PLAINTIFF, and such persons that may be added from time to time who satisfy
17 the requirements and exhaust the administrative procedures under the Private Attorney General
18 Act, bring this Representative Action on behalf of the State of California with respect to himself
19 and all persons who are or previously were employed by DEFENDANT in California and
20 classified as non-exempt during the time period of April 21, 2022, until the present (the
21 "AGGRIEVED EMPLOYEES").

22 54. On April 21, 2023, PLAINTIFF gave written notice by certified mail to the Labor
23 and Workforce Development Agency (the "Agency") and the employer of the specific
24 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
25 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
26 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
27 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
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1 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
2 EMPLOYEES as herein defined.

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

16 56. Some or all of the conduct and violations alleged herein occurred during the PAGA
17 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
18 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
19 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
20 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
21 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by **at least one** Labor
22 Code violation committed by an employer—to **pursue penalties for all the Labor Code**
23 **violations committed by that employer.**”], Emphasis added, reh'g denied (June 13, 2018).)

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the State of California and with respect to all AGGRIEVED
5 EMPLOYEES:

6 a. Recovery of civil penalties as prescribe by the Labor Code Private Attorneys
7 General Act of 2004; and

8 b. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law.
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10 DATED: July 3, 2023

ZAKAY LAW GROUP, APLC

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12 By: 

13 Shani O. Zakay, Esq.

14 Attorney for PLAINTIFFS
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EXHIBIT 1

April 21, 2023

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

MENZIES AVIATION (USA) INC.
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Via Certified U.S. Mail with Return Receipt No. 7022 1670 0001 3652 9902

AIRCRAFT SERVICE INTERNATIONAL, INC.
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Via Certified U.S. Mail with Return Receipt No. 7022 1670 0001 3652 9919

AIR MENZIES INTERNATIONAL (USA) INC.
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Via Certified U.S. Mail with Return Receipt No. 7022 1670 0001 3652 9926

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 ROBERT MORRIS III (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant MENZIES AVIATION (USA) INC. (“Defendant Menzies Aviation”), Defendant AIRCRAFT SERVICE INTERNATIONAL, INC. (“Defendant Aircraft Service International”) and Defendant AIR MENZIES INTERNATIONAL (USA) INC. (“Defendant Air Menzies International”) (collectively, hereinafter, “Defendants”). Plaintiff has been employed by Defendants since July of 2021, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to him and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition

to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant Menzies Aviation and/or Defendant Aircraft Service International and/or Defendant Air Menzies International in California during the relevant claim period.

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

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

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

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

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

Very truly yours,
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

ZAKAY LAW GROUP, APLC

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ROBERT MORRIS III, an individual, on behalf
of himself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

MENZIES AVIATION (USA) INC., a
Delaware corporation; AIRCRAFT SERVICE
INTERNATIONAL, INC., a Delaware
corporation; AIR MENZIES
INTERNATIONAL (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) UNPAID SICK PAY IN VIOLATION OF
11 CAL. LAB. CODE § 246.

12 **DEMAND FOR A JURY TRIAL**

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

16 **PRELIMINARY ALLEGATIONS**

17 1. Defendant MENZIES AVIATION (USA) INC. (“Defendant Menzies Aviation”)
18 is a Delaware corporation that at all relevant times mentioned herein conducted and continues to
19 conduct substantial and regular business throughout California.

20 2. Defendant AIRCRAFT SERVICE INTERNATIONAL, INC. (“Defendant
21 Aircraft Service International”) is a Delaware corporation that at all relevant times mentioned
22 herein conducted and continues to conduct substantial and regular business throughout California.

23 3. Defendant AIR MENZIES INTERNATIONAL (USA) INC. (“Defendant Air
24 Menzies International”) is a Delaware corporation that at all relevant times mentioned herein
25 conducted and continues to conduct substantial and regular business throughout California.

26 4. Defendant Menzies Aviation, Defendant Aircraft Service International and
27 Defendant Air Menzies International were the joint employers of PLAINTIFF as evidenced by
28 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.”

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1 5. DEFENDANT provides aircraft services in the state of California, including in the
2 county of Los Angeles, where PLAINTIFF worked.

3 6. PLAINTIFF has been employed by DEFENDANTS in California since July of
4 2021 as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal
5 and rest periods and payment of minimum and overtime wages due for all time worked.

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

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

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

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

THE CONDUCT

17. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal and rest premiums at the regular rate of pay, failed to pay PLAINTIFF and other CALIFORNIA CLASS Members redeemed sick pay at the regular rate of pay, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing,

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

8 **A. Meal Period Violations**

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

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

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

16 **B. Rest Period Violations**

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

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

6 **C. Unreimbursed Business Expenses**

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

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

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1 **D. Wage Statement Violations**

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

10 24. From time to time during the CLASS PERIOD, when PLAINTIFF and other
11 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
12 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS
13 also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
14 accurate wage statements which failed to show, among other things, all deductions, the total hours
15 worked and all applicable hourly rates in effect during the pay period and the corresponding
16 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
17 meal and rest periods. Further, from time to time, DEFENDANTS issued wage statements that
18 included items such as vacation pay, meal break penalties, sick pay and double-counted shift
19 differential payments into the calculation for total hours worked, in violation of Cal. Lab. Code §
20 226(a)(2).

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

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

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

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

28. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift work, including but not limited to, time spent fueling aircrafts, assisting with emergencies, inspecting for safety issues and conducting security sweeps of the premises. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 40. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
23 matter of company policy, practice, and procedure, intentionally and knowingly failed to
24 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
25 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
26 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain
27 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
28

operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

G. Unlawful Deductions

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

H. Timekeeping Manipulation

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

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

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

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1 45. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
2 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
3 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and
4 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
5 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
6 records.

7 **I. Unlawful Rounding Practices**

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

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

26 **J. Violations for Untimely Payment of Wages**

27 48. Pursuant to California Labor Code section 204, PLAINTIFF and the
28 CALIFORNIA CLASS members were entitled to timely payment of wages during their

1 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
2 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
3 meal period premium wages, and rest period premium wages within permissible time period.

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

22 **CLASS ACTION ALLEGATIONS**

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

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

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

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

- 18 a. Whether DEFENDANT maintained legally compliant meal period policies and
19 practices;
- 20 b. Whether DEFENDANT maintained legally compliant rest period policies and
21 practices;
- 22 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
23 Members accurate premium payments for missed meal and rest periods;
- 24 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
25 Members accurate overtime wages;
- 26 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
27 Members at least minimum wage for all hours worked;
- 28

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

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

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

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

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

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

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

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

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

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

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

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

24 68. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and
25 fraudulent in that DEFENDANTS’ uniform policy and practice failed to provide the legally
26 mandated meal and rest periods and the required amount of compensation for missed meal and
27 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
28 necessary business expenses incurred, due to a systematic business practice that cannot be

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

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

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

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

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

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

27 74. All the acts described herein as violations of, among other things, the Industrial
28 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor

Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

SECOND CAUSE OF ACTION

Failure To Pay Minimum Wages

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

Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)

77. 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.

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

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

3 79. 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 80. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a less wage than
7 the minimum so fixed is unlawful.

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

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

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

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

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

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

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

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

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

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

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

7 **THIRD CAUSE OF ACTION**

8 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **FOURTH CAUSE OF ACTION**

14 **Failure To Provide Required Meal Periods**

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

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

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

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

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

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

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

14 **FIFTH CAUSE OF ACTION**

15 **Failure To Provide Required Rest Periods**

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

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

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

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

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

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

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

15 **SIXTH CAUSE OF ACTION**

16 **Failure To Provide Accurate Itemized Statements**

17 **(Cal. Lab. Code § 226)**

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

19 115. 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.

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

- 24 a. Gross wages earned,
- 25 b. (2) total hours worked by the employee, except for any employee whose
26 compensation is solely based on a salary and who is exempt from payment of
27 overtime under subdivision (a) of Section 515 or any applicable order of the
28 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.

117. 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.

118. Further, from time to time, DEFENDANTS issued wage statements that included items such as vacation pay, meal break penalties, sick pay and double-counted shift differential payments into the calculation for total hours worked, in violation of Cal. Lab. Code § 226(a)(2).

119. 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.

120. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

SEVENTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code § 203)

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

211. 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.

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

As used in this article:

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

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

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

1 If an employee not having a written contract for a definite period quits his or her
2 employment, his or her wages shall become due and payable not later than 72 hours
3 thereafter, unless the employee has given 72 hours previous notice of his or her intention
4 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
5 Notwithstanding any other provision of law, an employee who quits without providing a
6 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
7 designates a mailing address. The date of the mailing shall constitute the date of payment
8 for purposes of the requirement to provide payment within 72 hours of the notice of
9 quitting.

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

12 126. Cal. Lab. Code § 203 provides:

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

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

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

26 **EIGHTH CAUSE OF ACTION**

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

28 **(Cal. Lab. Code §§ 2802)**

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

129. 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.

130. 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

1 duties, or of his or her obedience to the directions of the employer, even though
2 unlawful, unless the employee, at the time of obeying the directions, believed them
3 to be unlawful.

4 131. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
5 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
6 members for required expenses incurred in the discharge of their job duties for DEFENDANTS'
7 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
8 members for expenses which included, but were not limited to, the use of their personal cell
9 phones, all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and
10 other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal
11 cell phones to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS'
12 uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA
13 CLASS members for expenses resulting from the use of their personal cell phones within the
14 course and scope of their employment for DEFENDANTS. These expenses were necessary to
15 complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct
16 to assert any waiver of this expectation. Although these expenses were necessary expenses
17 incurred by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANTS failed to
18 indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these
19 expenses as an employer is required to do under the laws and regulations of California.

20 132. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
21 by him and the CALIFORNIA CLASS members in the discharge of their job duties for
22 DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the
23 statutory rate and costs under Cal. Lab. Code § 2802.
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1 **NINTH CAUSE OF ACTION**

2 **UNPAID SICK PAY**

3 **(Cal. Lab. Code § 246, *et seq.*)**

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

5 133. 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.

8 134. Cal. Labor Code Sections 246(I)(1) mandates that “[p]aid sick time for nonexempt
9 employees shall be calculated in the same manner as the regular rate of pay for the workweek in
10 which the employee uses paid sick time, whether or not the employee actually works overtime in
11 that workweek.”

12 135. From time-to-time, during the PLAINTIFF and other members of the
13 CALIFORNIA CLASS were compensated at an hourly rate plus either non-discretionary incentive
14 pay. As a matter of law, the non-discretionary incentive compensation received by PLAINTIFF
15 and other members of the CALIFORNIA CLASS must be included in the “regular rate of pay.”

16 136. From time-to-time during the CLASS PERIOD, in those pay periods where
17 PLAINTIFF and other members of the CALIFORNIA CLASS earned hourly compensation and
18 either non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to
19 properly calculate the regular rate of pay for purposes of compensating paid sick time by omitting
20 non-discretionary incentive pay from the regular rate of pay.

21 137. DEFENDANT’s uniform policy and practice of omitting non-discretionary
22 incentive pay and/or piece-rate pay from the regular rate of pay for purposes of paying paid sick
23 pay, resulted in the underpayment of sick pay wages to PLAINTIFF and other members of the
24 CALIFORNIA CLASS. PLAINTIFF and other members of the CALIFORNIA CLASS therefore
25 request recovery of all unpaid wages, including sick pay wages, according to proof, interest,
26 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
27 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
28 overtime compensation is determined to be owed to other members of the CALIFORNIA CLASS

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

7 138. Cal. Lab. Code § 246(i) provides that:

8 An employer shall provide an employee with written notice that sets forth the
9 amount of paid sick leave available, or paid time off leave an employer provides in
10 lieu of sick leave, for use on either the employee's itemized wage statement
11 described in Section 226 or in a separate writing provided on the designated pay
12 date with the employee's payment of wages. If an employer provides unlimited paid
13 sick leave or unlimited paid time off to an employee, the employer may satisfy this
14 section by indicating on the notice or the employee's itemized wage statement
15 "unlimited."

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

21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
23 severally, as follows:

24 1. On behalf of the CALIFORNIA CLASS:

- 25 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
26 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 27 b. An order temporarily, preliminarily and permanently enjoining and restraining
28 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANTS to pay all overtime wages and all sums
unlawfully withheld from compensation due to PLAINTIFF and the other members
of the CALIFORNIA CLASS; and

1 d. Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund
2 for restitution of the sums incidental to DEFENDANTS' violations due to
3 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

4 2. On behalf of the CALIFORNIA CLASS:

- 5 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
6 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
7 pursuant to Cal. Code of Civ. Proc. § 382;
- 8 b. Compensatory damages, according to proof at trial, including compensatory
9 damages for overtime compensation due to PLAINTIFF and the other members of
10 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
11 thereon at the statutory rate;
- 12 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
13 the applicable IWC Wage Order;
- 14 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
15 which a violation occurs and one hundred dollars (\$100) per each member of the
16 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
17 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
18 violation of Cal. Lab. Code § 226
- 19 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
20 penalty from the due date thereof at the same rate until paid or until an action
21 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 22 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
23 CLASS incurred in the course of their job duties, plus interest, and costs of suit.

24 3. On all claims:

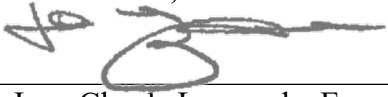
- 25 a. An award of interest, including prejudgment interest at the legal rate;
- 26 b. Such other and further relief as the Court deems just and equitable; and

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1 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
2 including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or
3 § 1194.
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5 DATED: April 21, 2023

JCL LAW FIRM, APC

6 By: 

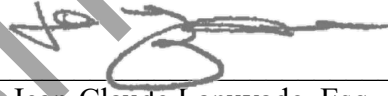
7 Jean-Claude Lapuyade, Esq.
8 Attorney for PLAINTIFFS

9 **DEMAND FOR A JURY TRIAL**

10 PLAINTIFFS demands a jury trial on issues triable to a jury.
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12 DATED: April 21, 2023

JCL LAW FIRM, APC

13 By: 

14 Jean-Claude Lapuyade, Esq.
15 Attorney for PLAINTIFFS
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