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CASE NAME: NORMA REYES vs. IMPERIAL IMPORTS, INC.	CASE NUMBER: CIVSB2304458
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

NORMA REYES, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

v.

IMPERIAL IMPORTS, INC., a California
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: CIVSB2304458

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

THE APPLICABLE IWC WAGE ORDER;
6) FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE § 226;
7) FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF
CALIFORNIA LABOR CODE §2802.
9) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ.]

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant IMPERIAL IMPORTS, INC. (“DEFENDANT” or “DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. DEFENDANTS owns and operate car dealerships, including but not limited to Toyota, Mitsubishi and Subaru dealerships in California, including in the county of San Bernardino where PLAINTIFF worked.

3. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one

1 or more of the events and happenings that proximately caused the injuries and damages
2 hereinafter alleged.

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

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

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

22 7. PLAINTIFF was employed by DEFENDANTS in California from June of 2020 to
23 February of 2022, paid in part an hourly wage, commission-based compensation, non-
24 discretionary bonuses, and entitled to minimum wages, overtime pay and legally compliant meal
25 and rest periods.

26 8. PLAINTIFF brings this Class Action on behalf of herself and a California class,
27 defined as all current and former non-exempt, exempt, piece-rate based, and/or commission-based
28 employees employed by DEFENDANTS in California ("CALIFORNIA CLASS") at any time

1 during the period beginning February 9, 2019, and ending on the date as determined by the Court
2 (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of the
3 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

18 11. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
19 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
20 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
21 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and
22 equitable relief.

23 **JURISDICTION AND VENUE**

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

28 ///

13. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities in this County and/or conduct substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

THE CONDUCT

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

A. Meal and Rest Period Violations

15. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor Codes, an employer shall not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30)

1 minutes, except that if the total work period per day of the employee is no more than six (6) hours,
2 the meal period may be waived by mutual consent of both the employer and employee. An
3 employer shall not employ an employee for a work period of more than ten (10) hours per day
4 without providing the employee with a second meal period of not less than thirty (30) minutes,
5 except that if the total hours worked is no more than twelve (12) hours, the second meal period
6 may be waived by mutual consent of the employer and the employee only if the first meal period
7 was not waived. If an employer fails to provide an employee with a mandated meal period, the
8 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
9 compensation for each workday that the meal period is not provided.

10 16. From time-to-time during the CALIFORNIA CLASS PERIOD, as a result of
11 understaffing and their rigorous work schedule, PLAINTIFF and other CALIFORNIA CLASS
12 members were from time to time unable to take thirty (30) minute off duty meal breaks and were
13 not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS
14 Members were from time to time required to perform work as ordered by DEFENDANT for more
15 than five (5) hours during a shift without receiving an off-duty meal break. Further,
16 DEFENDANT from time-to-time failed to provide PLAINTIFF and CALIFORNIA CLASS
17 members with a second off-duty meal period from time to time in which these employees were
18 required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and
19 the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
20 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

21 17. Further, pursuant to the Industrial Welfare Commission Wage Orders,
22 DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS members for all their
23 time worked, meaning the time during which an employee is subject to the control of an employer,
24 including all the time the employee suffered or permitted to work. DEFENDANT required
25 PLAINTIFF and CALIFORNIA CLASS members to work without paying them for all the time
26 they were under the DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF
27 to work while clocked out during what was supposed to be PLAINTIFF's off duty meal break due
28 to PLAINTIFF's rigorous work schedule and DEFENDANT's understaffing. PLAINTIFF was

1 from time to time interrupted by work assignments while clocked out for what should have been
2 PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other CALIFORNIA CLASS
3 members forfeited minimum wage and overtime compensation by regularly working without their
4 time being accurately recorded and without compensation at the applicable minimum wage and
5 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
6 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
7 records.

8 18. Pursuant to the Industrial Welfare Commission Wage Orders and the California
9 Labor Codes, an employer shall authorize and permit all employees to take a rest period, which
10 so far as practical shall be in the middle of each work period. Generally, an employer must provide
11 ten (10) minutes of paid rest for every four hours or major fraction thereof. If an employer fails
12 to provide an employee a rest period, the employer shall pay the employee one (1) hour of pay at
13 the employee's regular rate of pay for each workday that the rest period is not provided.

14 19. Additionally, during the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
15 CALIFORNIA CLASS members were from time-to-time required to work in excess of four (4)
16 hours without being provided duty-free, uninterrupted, ten (10) minute rest period. Further, for
17 the same reasons, these employees were denied their first rest periods of at least ten (10) minutes
18 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
19 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
20 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
21 or more from time to time. As a result, PLAINTIFF and the other CALIFORNIA CLASS
22 Members were from time to time required to remain on the premises, on-duty and on-call during
23 their rest periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided
24 with one-hour wages in lieu thereof.

25 **B. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
26 **Sick Pay**

27 20. State law provides that employees must be paid overtime at one-and-one-half times
28 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS were compensated at

1 an hourly rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific
2 elements of an employee's performance and/or commissions.

3 21. DEFENDANTS' non-discretionary commission and bonus program provided the
4 CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation
5 when the employees met the various performance goals set by DEFENDANT. However, when
6 calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA
7 CLASS worked overtime and earned non-discretionary bonus and/or commission wages,
8 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or
9 commission wages as part of the employees' "regular rate of pay."

10 22. Management and supervisors described the bonus and commissions programs and
11 commission compensation program to potential and new employees as part of the compensation
12 package for new and used car salespersons including PLAINTIFF and the CALIFORNIA
13 CLASS. As a matter of law, the incentive and commission compensation received by
14 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly
15 calculated into the "regular rate of pay" for purposes of overtime and double time compensation,
16 meal and rest period premium payments, and sick pay. DEFENDANT's failure to do so has
17 resulted in DEFENDANT's systematic underpayment of overtime and double time compensation,
18 meal and rest period premium payments, and sick pay to PLAINTIFF and other CALIFORNIA
19 CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time
20 for non-employees shall be calculated in the same manner as the regular rate of pay for the
21 workweek in which the employee uses paid sick time, whether or not the employee actually works
22 overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include
23 the incentive compensation as part of the "regular rate of pay" for purposes of sick pay
24 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable
25 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

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

9 **C. Commission and Piece-Rate Violations**

10 24. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
11 the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those
12 instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission
13 and/or piece-rate basis, PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately
14 compensated for all non-productive time at an hourly rate that is no less than the applicable
15 minimum wage. Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA
16 CLASS were paid in part on a commission and/or piece-rate basis, DEFENDANT failed to
17 separately compensate PLAINTIFF and the CALIFORNIA CLASS for all non-productive time,
18 including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable
19 minimum wage. As a result, PLAINTIFF and the CALIFORNIA CLASS forfeited minimum
20 wages and overtime wages by DEFENDANT'S failure to separately compensate their non-
21 productive time at an hourly rate that is no less than the applicable minimum wage.

22 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

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

26 26. During the CLASS PERIOD, from time-to-time DEFENDANT required
27 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
28 work, including but not limited to, receiving and responding to work-related communications and

1 completing paperwork in order to process deals. This resulted in PLAINTIFF and other members
2 of the CALIFORNIA CLASS to have to work while off-the-clock.

3 27. DEFENDANT directed and directly benefited from the undercompensated off-the-
4 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

5 28. DEFENDANT controlled the work schedules, duties, and protocols, applications,
6 assignments, and employment conditions of PLAINTIFF and the other members of the
7 CALIFORNIA CLASS.

8 29. DEFENDANT was able to track the amount of time PLAINTIFF and the other
9 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
10 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
11 wages earned and owed for all the work they performed.

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

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

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

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

27 **E. Unlawful Rounding Practices**

28 34. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in place
an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
CALIFORNIA CLASS Members for the actual time these employees worked each day, including

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

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

15 **F. Timekeeping Manipulation**

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

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

28 38. The mutability of the timekeeping system also allowed DEFENDANTS to alter
employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'

1 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
2 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
3 were not at all times provided an off-duty meal break. This practice is a direct result of
4 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30) minute
5 off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

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

11 **G. Unreimbursed Business Expenses**

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

23 41. In the course of their employment, DEFENDANTS required PLAINTIFF and
24 other CALIFORNIA CLASS Members to use their personal cell phones as a result of and in
25 furtherance of their job duties as employees for DEFENDANT. But for the use of their own
26 personal cell phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete
27 their essential job duties, including but not limited to, sending and receiving work-related
28 communications from DEFENDANTS. However, DEFENDANTS unlawfully failed to
reimburse PLAINTIFF and other CALIFORNIA CLASS Members for their use of their personal

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

5 **H. Wage Statement Violations**

6 42. California Labor Code Sections 226 and 226.2 require an employer to furnish its
7 employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total
8 hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
9 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
10 paid, (7) the name of the employee and only the last four digits of the employee's social security
11 number or an employee identification number other than a social security number, (8) the name
12 and address of the legal entity that is the employer, (9) all applicable hourly rates in effect during
13 the pay period and the corresponding number of hours worked at each hourly rate by the
14 employee; (10) the total hours of compensable rest and recovery periods, the rate of compensation,
15 and the gross wages paid for those periods during the pay period, and (11) the total hours of other
16 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
17 pay period.

18 43. From time-to-time during the CALIFORNIA CLASS PERIOD, DEFENDANT
19 furnished PLAINTIFF and the CALIFORNIA CLASS written wage statements that failed to
20 accurately show (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units
21 earned and any applicable piece-rate, (4) net wages earned, (5) all applicable hourly rates in effect
22 during the pay period and the corresponding number of hours worked at each hourly rate by the
23 employee; (6) the total hours of compensable rest and recovery periods, the rate of compensation,
24 and the gross wages paid for those periods during the pay period, and (7) the total hours of other
25 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
26 pay period. Further, DEFENDANT from time to time failed to provide PLAINTIFF and other
27 CALIFORNIA CLASS Member with itemized wage statements that provided the correct name
28

1 and address of the legal entity that employed PLAINTIFF and other CALIFORNIA CLASS
2 members, in violation of Cal. Lab. Code § 226(a)(8).

3 44. In addition to the violations described above, DEFENDANTS, from time to time,
4 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
5 that comply with Cal. Lab. Code § 226.

6 45. As a result, DEFENDANTS issued PLAINTIFF and the CALIFORNIA CLASS
7 with wage statements that violate Cal. Lab. Code §§ 226 and 226.2. Further, DEFENDANTS'
8 violations are knowing and intentional, were not isolated or due to an unintentional payroll error
9 due to clerical or inadvertent mistake.

10 **I. Unlawful Deductions**

11 46. DEFENDANT unlawfully deducted wages from PLAINTIFF and CALIFORNIA
12 CLASS Members' pay for taxes and for vehicle repairs without authorization to do so or notice
13 to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANT violated
14 Labor Code § 221.

15 47. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
16 required off-duty meal breaks to her and paid rest periods to her as required by the applicable
17 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for her missed
18 meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent her from
19 being relieved of all of her duties for the legally required off-duty meal periods. Further,
20 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday
21 in which PLAINTIFF was required by DEFENDANT to work ten (10) hours of work. As a result,
22 DEFENDANT'S failure to provide PLAINTIFFS with the legally required second off-duty meal
23 period is evidenced by DEFENDANT's business records. From time to time, and as a result of
24 DEFENDANT not accurately recording all missed meal and rest periods, and failing to pay
25 minimum wages due for all time worked and separate compensation for rest breaks, the wage
26 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,
27 Labor Code Section 226(a). Further, DEFENDANT failed to reimburse PLAINTIFF for all
28 required business expenses including for the use of her personal cell phone. To date,

1 DEFENDANT has yet to pay PLAINTIFF all of her wages due to her and all premiums due to
2 her for missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages owed
3 to her under California Labor Code Section 203. The amount in controversy for PLAINTIFF
4 individually does not exceed \$75,000.

5 **THE CALIFORNIA CLASS**

6 48. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
7 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a Class
8 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of all current and former non-exempt,
9 exempt, exempt, piece-rate based, and/or commission-based employees employed by
10 DEFENDANT in California ("CALIFORNIA CLASS") at any time during the period beginning
11 four (4) years prior to the filing of this Complaint and ending on the date as determined by the
12 Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of
13 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

14 49. To the extent equitable tolling operates to toll claims by the CALIFORNIA
15 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
16 accordingly.

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

24 51. The members of the class are so numerous that joinder of all class members is
25 impractical.

26 52. Common questions of law and fact regarding DEFENDANTS' conduct, including
27 but not limited to, the off-the-clock work, unpaid mean and rest period premiums, failing to
28 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure

1 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
2 minimum wage and overtime, exist as to all members of the class and predominate over any
3 questions affecting solely any individual members of the class. Among the questions of law and
4 fact common to the class are:

- 5 i. Whether DEFENDANTS maintained legally compliant meal period policies
6 and practices;
- 7 ii. Whether DEFENDANTS maintained legally compliant rest period policies
8 and practices;
- 9 iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
10 CLASS Members accurate premium payments for missed meal and rest
11 periods;
- 12 iv. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
13 CLASS Members accurate overtime wages;
- 14 v. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
15 CLASS Members at least minimum wage for all hours worked;
- 16 vi. Whether Defendants failed to compensate PLAINTIFF and the
17 CALIFORNIA CLASS Members for required business expenses;
- 18 vii. Whether DEFENDANTS issued legally compliant wage statements;
- 19 viii. Whether DEFENDANTS committed an act of unfair competition by
20 systematically failing to record and pay PLAINTIFF and the other members
21 of the CALIFORNIA CLASS for all time worked;
- 22 ix. Whether DEFENDANTS committed an act of unfair competition by
23 systematically failing to record all meal and rest breaks missed by
24 PLAINTIFF and other CALIFORNIA CLASS Members, even though
25 DEFENDANTS enjoyed the benefit of this work, required employees to
26 perform this work and permits or suffers to permit this work;
- 27 x. Whether DEFENDANTS committed an act of unfair competition in
28 violation of the UCL, by failing to provide the PLAINTIFF and the other

1 members of the CALIFORNIA CLASS with the legally required meal and
2 rest periods.

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

5 54. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
6 the same interests as the other members of the class.

7 55. PLAINTIFF will fairly and adequately represent and protect the interests of the
8 CALIFORNIA CLASS Members.

9 56. PLAINTIFF retained able class counsel with extensive experience in class action
10 litigation.

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

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

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

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

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1 Cal. Bus. & Prof. Code § 17203.

2 65. By the conduct alleged herein, DEFENDANT has engaged and continues to engage
3 in a business practice which violates California law, including but not limited to, the applicable
4 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code
5 including Sections 201, 202, 203, 204, 206.5, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198
6 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
7 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
8 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

1 provide all legally required meal and rest breaks to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

8 71. PLAINTIFF further demands on behalf of herself and each member of the
9 CALIFORNIA CLASS one (1) hour of pay for each workday in which a rest period was not given
10 and a premium was not timely provided as required by law.

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

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

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

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

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

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

10 **SECOND CAUSE OF ACTION**

11 **Failure To Pay Minimum Wages**

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

13 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

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

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

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

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

28 82. As set forth above, during the CLASS PERIOD, DEFENDANT maintained a

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

5 83. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
6 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
7 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
8 and the other members of the CALIFORNIA CLASS regarding minimum wage pay.

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

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

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

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

26 88. DEFENDANT knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA CLASS were under compensated for their time worked.
28 DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
2 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
3 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
4 for their time worked.

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

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

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

6 98. In committing these violations of the California Labor Code, DEFENDANT acted
7 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
8 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
9 laws and regulations.

10 99. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
11 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full
12 compensation for all overtime worked.

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

20 101. During the CLASS PERIOD, PLAINTIFF and the other members of the
21 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
22 failure to pay all earned wages.

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

1 witnessed by employees.

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

7 104. DEFENDANT knew or should have known that PLAINTIFF and the other
8 members of the CALIFORNIA CLASS are under compensated for their overtime worked.
9 DEFENDANT systematically elected, either through intentional malfeasance or gross
10 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
11 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
12 PLAINTIFF and the other members of the CALIFORNIA CLASS the applicable overtime rate.

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

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

Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

FOURTH CAUSE OF ACTION

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

107. 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.

108. During the CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the CALIFORNIA CLASS as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and the CALIFORNIA CLASS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and the CALIFORNIA CLASS were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

111. 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.

112. During the CLASS PERIOD, PLAINTIFF and the CALIFORNIA CLASS were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and the CALIFORNIA CLASS were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and the CALIFORNIA CLASS were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

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

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

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1 PLAINTIFF and other CALIFORNIA CLASS Member with itemized wage statements that
2 provided the correct name and address of the legal entity that employed PLAINTIFF and other
3 CALIFORNIA CLASS members, in violation of Cal. Lab. Code § 226(a)(8).

4 118. Further, during the CLASS PERIOD, DEFENDANTS also failed to provide
5 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
6 wage statements in compliance with Cal. Labor Code Section 226.2, which failed to accurately
7 show, among other things: (1) the total hours of compensable rest and recovery periods; and (2)
8 the total hours of other nonproductive time, the rate of compensation for the nonproductive time
9 and the gross wages paid for the nonproductive time during the applicable pay period.

10 119. PLAINTIFFS and the members of the CALIFORNIA CLASS were injured by
11 DEFENDANTS' violations in that they could not promptly and easily determine from the wage
12 statement alone, the amount of gross or net wages paid, the total hours worked, the number pf
13 piece-rate units earned and any applicable piece-rate, all applicable hourly rates in effect during
14 the pay period and the corresponding number of hours worked at each hourly rate to the employee
15 during the applicable pay period.

16 120. DEFENDANTS violations of Cal. Labor Code § 226 and 226.2 were knowing and
17 intentional in that DEFENDANTS willfully intended to issue wage statements that were out of
18 compliance with § 226 and 226.2.

19 121. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor
20 Code § 226 and 226.2, causing injury and damages to the PLAINTIFF and the other members of
21 the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended
22 calculating the correct rates for the overtime worked and the amount of employment taxes which
23 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.
24 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
25 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
26 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
27 pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor
28 Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more

1 than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
2 CALIFORNIA CLASS herein).

3 **SEVENTH CAUSE OF ACTION**

4 **Failure To Pay Wages When Due**

5 **(Cal. Lab. Code §§ 203)**

6 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

9 123. Cal. Lab. Code § 200 provides, in relevant part, that:

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

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

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

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

1 date of the mailing shall constitute the date of payment for purposes
2 of the requirement to provide payment within 72 hours of the notice
3 of quitting.

4 126. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
5 Members' employment contract.

6 127. Cal. Lab. Code § 203 provides, in relevant part, that:

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

13
14 128. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
15 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

16 129. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
17 members of the CALIFORNIA CLASS whose employment has terminated and who have unpaid
18 minimum and/or overtime wages and/or missed meal and rest breaks without being paid the
19 legally required penalties by DEFENDANT, PLAINTIFF demands up to thirty days of pay as
20 penalty for not timely paying all wages due at time of termination for all employees who
21 terminated employment during the CLASS PERIOD plus interest and statutory costs as allowed
22 by law.

23 **EIGHTH CAUSE OF ACTION**

24 **Failure To Reimburse Employees For Required Expenses**

25 **(Cal. Lab. Code §§ 2802)**

26 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

1 Complaint.

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

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

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

26 133. PLAINTIFF therefore demands reimbursement on behalf of the members of the
27 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
28

1 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with
2 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

3 **NINTH CAUSE OF ACTION**

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

5 **(Cal. Lab. Code §§2698 et seq.)**

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

7 134. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
8 herein, the prior paragraphs of this First Amended Complaint.

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

18 136. PLAINTIFF, and such persons that may be added from time to time who satisfy
19 the requirements and exhaust the administrative procedures under the Private Attorney General
20 Act, bring this Representative Action on behalf of the State of California with respect to herself
21 and all non-exempt, exempt, commission-based and/or piece rate based employees who worked
22 for DEFENDANT in California during the time period of February 7, 2022 until the present (the
23 "AGGRIEVED EMPLOYEES").

24 137. On February 7, 2023, PLAINTIFF gave written notice by certified mail to the
25 Labor and Workforce Development Agency (the "Agency") and the employer of the specific
26 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
27 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
28 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant

1 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
2 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
3 EMPLOYEES as herein defined.

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

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

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PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

2. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for

violation of Cal. Lab. Code § 226

3. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEYES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004;
4. On all claims:
 - a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and
 - c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: May 5, 2023

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: May 5, 2023

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorney for PLAINTIFF

EXHIBIT 1

February 7, 2023

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

IMPERIAL IMPORTS, INC.

c/o Sean S. Varner
3750 University Avenue, Suite 610
Riverside, CA 92501

Sent Via Certified Mail and Return Receipt No. 7022 3330 0000 0722 4935

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

Dear Sir/Madam:

Our offices represent Plaintiff NORMA REYES ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant IMPERIAL IMPORTS, INC. ("Defendant"). Plaintiff was employed by Defendant in California from June of 2020 to February of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendant, 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. Plaintiff and aggrieved employees also worked at times for Defendant as commission-based employees entitled to be separately compensated for their non-productive time, including rest periods. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

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

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt, exempt, commission-based and/or piece-rate based employees who worked for Defendant in California during the relevant claim period.

A true and correct copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities,

dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant, 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, Defendant is on notice that Plaintiff continues her investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

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

JCL LAW FIRM, APC

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Attorneys for Plaintiff

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

NORMA REYES, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

v.

IMPERIAL IMPORTS, INC., a California
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
8 EMPLOYEES FOR REQUIRED
9 EXPENSES IN VIOLATION OF
10 CALIFORNIA LABOR CODE §2802.

11 **DEMAND FOR A JURY TRIAL**

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

15 **THE PARTIES**

16 1. Defendant IMPERIAL IMPORTS, INC. (“DEFENDANT” or “DEFENDANT”)
17 is a California corporation that at all relevant times mentioned herein conducted and continues to
18 conduct substantial and regular business in the state of California.

19 2. DEFENDANTS owns and operate car dealerships, including but not limited to
20 Toyota, Mitsubishi and Subaru dealerships in California, including in the county of San
21 Bernardino where PLAINTIFF worked.

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

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

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

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

20 7. PLAINTIFF was employed by DEFENDANTS in California from June of 2020 to
21 February of 2022, paid in part an hourly wage, commission-based compensation, non-
22 discretionary bonuses, and entitled to minimum wages, overtime pay and legally compliant meal
23 and rest periods.

24 8. PLAINTIFF brings this Class Action on behalf of herself and a California class,
25 defined as all current and former non-exempt, exempt, piece-rate based, and/or commission-based
26 employees employed by DEFENDANTS in California ("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"). The amount in controversy for the

1 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
2 (\$5,000,000.00).

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

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

17 11. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
18 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
19 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
20 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and
21 equitable relief.

22 **JURISDICTION AND VENUE**

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

27 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and

1 DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities
2 in this County and/or conduct substantial business in this County, and (ii) committed the wrongful
3 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

4 **THE CONDUCT**

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

23 **A. Meal and Rest Period Violations**

24 15. Pursuant to the Industrial Welfare Commission Wage Orders and the California
25 Labor Codes, an employer shall not employ an employee for a work period of more than five (5)
26 hours per day without providing the employee with a meal period of not less than thirty (30)
27 minutes, except that if the total work period per day of the employee is no more than six (6) hours,
28 the meal period may be waived by mutual consent of both the employer and employee. An

1 employer shall not employ an employee for a work period of more than ten (10) hours per day
2 without providing the employee with a second meal period of not less than thirty (30) minutes,
3 except that if the total hours worked is no more than twelve (12) hours, the second meal period
4 may be waived by mutual consent of the employer and the employee only if the first meal period
5 was not waived. If an employer fails to provide an employee with a mandated meal period, the
6 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
7 compensation for each workday that the meal period is not provided.

8 16. From time-to-time during the CALIFORNIA CLASS PERIOD, as a result of
9 understaffing and their rigorous work schedule, PLAINTIFF and other CALIFORNIA CLASS
10 members were from time to time unable to take thirty (30) minute off duty meal breaks and were
11 not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS
12 Members were from time to time required to perform work as ordered by DEFENDANT for more
13 than five (5) hours during a shift without receiving an off-duty meal break. Further,
14 DEFENDANT from time-to-time failed to provide PLAINTIFF and CALIFORNIA CLASS
15 members with a second off-duty meal period from time to time in which these employees were
16 required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and
17 the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
18 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

19 17. Further, pursuant to the Industrial Welfare Commission Wage Orders,
20 DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS members for all their
21 time worked, meaning the time during which an employee is subject to the control of an employer,
22 including all the time the employee suffered or permitted to work. DEFENDANT required
23 PLAINTIFF and CALIFORNIA CLASS members to work without paying them for all the time
24 they were under the DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF
25 to work while clocked out during what was supposed to be PLAINTIFF's off duty meal break due
26 to PLAINTIFF's rigorous work schedule and DEFENDANT's understaffing. PLAINTIFF was
27 from time to time interrupted by work assignments while clocked out for what should have been
28 PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other CALIFORNIA CLASS

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

6 18. Pursuant to the Industrial Welfare Commission Wage Orders and the California
7 Labor Codes, an employer shall authorize and permit all employees to take a rest periods, which
8 so far as practical shall be in the middle of each work period. Generally, an employer must provide
9 ten (10) minutes of paid rest for every four hours or major fraction thereof. If an employer fails
10 to provide an employee a rest period, the employer shall pay the employee one (1) hour of pay at
11 the employee's regular rate of pay for each workday that the rest period is not provided.

12 19. Additionally, during the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
13 CALIFORNIA CLASS members were from time-to-time required to work in excess of four (4)
14 hours without being provided duty-free, uninterrupted, ten (10) minute rest period. Further, for
15 the same reasons, these employees were denied their first rest periods of at least ten (10) minutes
16 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
17 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
18 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
19 or more from time to time. As a result, PLAINTIFF and the other CALIFORNIA CLASS
20 Members were from time to time required to remain on the premises, on-duty and on-call during
21 their rest periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided
22 with one-hour wages in lieu thereof.

23 **B. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
24 **Sick Pay**

25 20. State law provides that employees must be paid overtime at one-and-one-half times
26 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS were compensated at
27 an hourly rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific
28 elements of an employee's performance and/or commissions.

1 21. DEFENDANTS' non-discretionary commission and bonus program provided the
2 CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation
3 when the employees met the various performance goals set by DEFENDANT. However, when
4 calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA
5 CLASS worked overtime and earned non-discretionary bonus and/or commission wages,
6 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or
7 commission wages as part of the employees' "regular rate of pay."

8 22. Management and supervisors described the bonus and commissions programs and
9 commission compensation program to potential and new employees as part of the compensation
10 package for new and used car salespersons including PLAINTIFF and the CALIFORNIA
11 CLASS. As a matter of law, the incentive and commission compensation received by
12 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly
13 calculated into the "regular rate of pay" for purposes of overtime and double time compensation,
14 meal and rest period premium payments, and sick pay. DEFENDANT's failure to do so has
15 resulted in DEFENDANT's systematic underpayment of overtime and double time compensation,
16 meal and rest period premium payments, and sick pay to PLAINTIFF and other CALIFORNIA
17 CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time
18 for non-employees shall be calculated in the same manner as the regular rate of pay for the
19 workweek in which the employee uses paid sick time, whether or not the employee actually works
20 overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include
21 the incentive compensation as part of the "regular rate of pay" for purposes of sick pay
22 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable
23 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

24 23. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
26 matter of company policy, practice and procedure, intentionally and knowingly failed to
27 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
28 of pay for all overtime and double time compensation, meal and rest period premium payments,

1 and sick pay. This uniform policy and practice of DEFENDANTS is intended to purposefully
2 avoid the payment of the correct overtime and double time compensation, meal and rest period
3 premium payments, and sick pay as required by California law which allowed DEFENDANTS to
4 illegally profit and gain an unfair advantage over competitors who complied with the law. To the
5 extent equitable tolling operates to toll claims by the CALIFORNIA CLASS members against
6 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

7 **C. Commission and Piece-Rate Violations**

8 24. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
9 the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those
10 instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission
11 and/or piece-rate basis, PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately
12 compensated for all non-productive time at an hourly rate that is no less than the applicable
13 minimum wage. Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA
14 CLASS were paid in part on a commission and/or piece-rate basis, DEFENDANT failed to
15 separately compensate PLAINTIFF and the CALIFORNIA CLASS for all non-productive time,
16 including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable
17 minimum wage. As a result, PLAINTIFF and the CALIFORNIA CLASS forfeited minimum
18 wages and overtime wages by DEFENDANT'S failure to separately compensate their non-
19 productive time at an hourly rate that is no less than the applicable minimum wage.

20 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

21 25. During the CLASS PERIOD, from time-to-time DEFENDANT failed and continues
22 to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS for all hours
23 worked.

24 26. During the CLASS PERIOD, from time-to-time DEFENDANT required
25 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
26 work, including but not limited to, receiving and responding to work-related communications and
27 completing paperwork in order to process deals. This resulted in PLAINTIFF and other members
28 of the CALIFORNIA CLASS to have to work while off-the-clock.

1 27. DEFENDANT directed and directly benefited from the undercompensated off-the-
2 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

3 28. DEFENDANT controlled the work schedules, duties, and protocols, applications,
4 assignments, and employment conditions of PLAINTIFF and the other members of the
5 CALIFORNIA CLASS.

6 29. DEFENDANT was able to track the amount of time PLAINTIFF and the other
7 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
8 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
9 wages earned and owed for all the work they performed.

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

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

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

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

25 **E. Unlawful Rounding Practices**

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

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

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

13 **F. Timekeeping Manipulation**

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

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

26 38. 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 members of the
CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees

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

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

9 **G. Unreimbursed Business Expenses**

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

21 41. In the course of their employment, DEFENDANTS required PLAINTIFF and
22 other CALIFORNIA CLASS Members to use their personal cell phones as a result of and in
23 furtherance of their job duties as employees for DEFENDANT. But for the use of their own
24 personal cell phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete
25 their essential job duties, including but not limited to, sending and receiving work-related
26 communications from DEFENDANTS. However, DEFENDANTS unlawfully failed to
27 reimburse PLAINTIFF and other CALIFORNIA CLASS Members for their use of their personal
28 cell phones. As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF

1 and other CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were
2 not limited to, costs related to the use of their personal cellular phones, all on behalf of and for
3 the benefit of DEFENDANTS.

4 **H. Wage Statement Violations**

5 42. California Labor Code Sections 226 and 226.2 require an employer to furnish its
6 employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total
7 hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
8 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
9 paid, (7) the name of the employee and only the last four digits of the employee's social security
10 number or an employee identification number other than a social security number, (8) the name
11 and address of the legal entity that is the employer, (9) all applicable hourly rates in effect during
12 the pay period and the corresponding number of hours worked at each hourly rate by the
13 employee; (10) the total hours of compensable rest and recovery periods, the rate of compensation,
14 and the gross wages paid for those periods during the pay period, and (11) the total hours of other
15 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
16 pay period.

17 43. From time-to-time during the CALIFORNIA CLASS PERIOD, DEFENDANT
18 furnished PLAINTIFF and the CALIFORNIA CLASS written wage statements that failed to
19 accurately show (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units
20 earned and any applicable piece-rate, (4) net wages earned, (5) all applicable hourly rates in effect
21 during the pay period and the corresponding number of hours worked at each hourly rate by the
22 employee; (6) the total hours of compensable rest and recovery periods, the rate of compensation,
23 and the gross wages paid for those periods during the pay period, and (7) the total hours of other
24 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
25 pay period. Further, DEFENDANT from time to time failed to provide PLAINTIFF and other
26 CALIFORNIA CLASS Member with itemized wage statements that provided the correct name
27 and address of the legal entity that employed PLAINTIFF and other CALIFORNIA CLASS
28 members, in violation of Cal. Lab. Code § 226(a)(8).

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

4 45. As a result, DEFENDANTS issued PLAINTIFF and the CALIFORNIA CLASS
5 with wage statements that violate Cal. Lab. Code §§ 226 and 226.2. Further, DEFENDANTS'
6 violations are knowing and intentional, were not isolated or due to an unintentional payroll error
7 due to clerical or inadvertent mistake.

8 **I. Unlawful Deductions**

9 46. DEFENDANT unlawfully deducted wages from PLAINTIFF and CALIFORNIA
10 CLASS Members' pay for taxes and for vehicle repairs without authorization to do so or notice
11 to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANT violated
12 Labor Code § 221.

13 47. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
14 required off-duty meal breaks to her and paid rest periods to her as required by the applicable
15 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for her missed
16 meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent her from
17 being relieved of all of her duties for the legally required off-duty meal periods. Further,
18 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday
19 in which PLAINTIFF was required by DEFENDANT to work ten (10) hours of work. As a result,
20 DEFENDANT'S failure to provide PLAINTIFFS with the legally required second off-duty meal
21 period is evidenced by DEFENDANT's business records. From time to time, and as a result of
22 DEFENDANT not accurately recording all missed meal and rest periods, and failing to pay
23 minimum wages due for all time worked and separate compensation for rest breaks, the wage
24 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,
25 Labor Code Section 226(a). Further, DEFENDANT failed to reimburse PLAINTIFF for all
26 required business expenses including for the use of her personal cell phone. To date,
27 DEFENDANT has yet to pay PLAINTIFF all of her wages due to her and all premiums due to
28 her for missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages owed

1 to her under California Labor Code Section 203. The amount in controversy for PLAINTIFF
2 individually does not exceed \$75,000.

3 **THE CALIFORNIA CLASS**

4 48. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
5 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a Class
6 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of all current and former non-exempt,
7 exempt, exempt, piece-rate based, and/or commission-based employees employed by
8 DEFENDANT in California ("CALIFORNIA CLASS") at any time during the period beginning
9 four (4) years prior to the filing of this Complaint and ending on the date as determined by the
10 Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of
11 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

12 49. To the extent equitable tolling operates to toll claims by the CALIFORNIA
13 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
14 accordingly.

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

22 51. The members of the class are so numerous that joinder of all class members is
23 impractical.

24 52. Common questions of law and fact regarding DEFENDANTS' conduct, including
25 but not limited to, the off-the-clock work, unpaid mean and rest period premiums, failing to
26 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
27 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
28 minimum wage and overtime, exist as to all members of the class and predominate over any

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

- 3 i. Whether DEFENDANTS maintained legally compliant meal period policies
4 and practices;
- 5 ii. Whether DEFENDANTS maintained legally compliant rest period policies
6 and practices;
- 7 iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
8 CLASS Members accurate premium payments for missed meal and rest
9 periods;
- 10 iv. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
11 CLASS Members accurate overtime wages;
- 12 v. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
13 CLASS Members at least minimum wage for all hours worked;
- 14 vi. Whether Defendants failed to compensate PLAINTIFF and the
15 CALIFORNIA CLASS Members for required business expenses;
- 16 vii. Whether DEFENDANTS issued legally compliant wage statements;
- 17 viii. Whether DEFENDANTS committed an act of unfair competition by
18 systematically failing to record and pay PLAINTIFF and the other members
19 of the CALIFORNIA CLASS for all time worked;
- 20 ix. Whether DEFENDANTS committed an act of unfair competition by
21 systematically failing to record all meal and rest breaks missed by
22 PLAINTIFF and other CALIFORNIA CLASS Members, even though
23 DEFENDANTS enjoyed the benefit of this work, required employees to
24 perform this work and permits or suffers to permit this work;
- 25 x. Whether DEFENDANTS committed an act of unfair competition in
26 violation of the UCL, by failing to provide the PLAINTIFF and the other
27 members of the CALIFORNIA CLASS with the legally required meal and
28 rest periods.

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

3 54. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
4 the same interests as the other members of the class.

5 55. PLAINTIFF will fairly and adequately represent and protect the interests of the
6 CALIFORNIA CLASS Members.

7 56. PLAINTIFF retained able class counsel with extensive experience in class action
8 litigation.

9 57. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
10 interests of the other CALIFORNIA CLASS Members.

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

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

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

- 26 i. Inconsistent or varying adjudications with respect to individual members of the
27 CALIFORNIA CLASS which would establish incompatible standards of
28 conduct for the parties opposing the CALIFORNIA CLASS; and/or,

1 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code
2 including Sections 201, 202, 203, 204, 206.5, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198
3 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
4 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
5 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

24 69. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
25 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed to
26 provide all legally required meal and rest breaks to PLAINTIFF and the other members of the
27 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

28 70. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each

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

5 71. PLAINTIFF further demands on behalf of herself and each member of the
6 CALIFORNIA CLASS one (1) hour of pay for each workday in which a rest period was not given
7 and a premium was not timely provided as required by law.

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

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

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

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

28

76. 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 DEFENDANT is 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 LABOR SUB-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 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages.

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

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

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

82. As set forth above, during the CLASS PERIOD, DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA CLASS without regard to the correct amount of time they worked. As set forth herein,

1 DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely
2 payment of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

3 83. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
4 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
5 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
6 and the other members of the CALIFORNIA CLASS regarding minimum wage pay.

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

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

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

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

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

1 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
2 for their time worked.

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

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

22 **THIRD CAUSE OF ACTION**

23 **Failure To Pay Overtime Compensation**

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

25 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

1 92. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
2 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
3 Welfare Commission requirements for DEFENDANTS' failure to properly compensate the
4 members of the CALIFORNIA CLASS for all overtime worked, including, work performed in
5 excess of eight (8) hours in a workday and/or forty (40) hours in any workweek during the CLASS
6 PERIOD.

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

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

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

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

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

27 98. In committing these violations of the California Labor Code, DEFENDANT acted
28 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of

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

3 99. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
4 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full
5 compensation for all overtime worked.

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

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

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

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

28 104. DEFENDANT knew or should have known that PLAINTIFF and the other

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

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

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

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1 **FIFTH CAUSE OF ACTION**

2 **Failure To Provide Required Rest Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

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

5 111. 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.

8 112. During the CLASS PERIOD, PLAINTIFF and the CALIFORNIA CLASS were
9 also required to work in excess of four (4) hours without being provided ten (10) minute rest
10 periods. Further, these employees were denied their first rest periods of at least ten (10) minutes
11 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
12 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
13 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
14 or more. PLAINTIFF and the CALIFORNIA CLASS were also not provided with one-hour
15 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and the
16 CALIFORNIA CLASS were periodically denied their proper rest periods by DEFENDANT and
17 DEFENDANT's managers.

18 113. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
19 IWC Wage Order by failing to compensate PLAINTIFF and the CALIFORNIA CLASS who were
20 not provided a rest period, in accordance with the applicable Wage Order, one additional hour of
21 compensation at each employee's regular rate of pay for each workday that rest period was not
22 provided.

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

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1 PLAINTIFF and other CALIFORNIA CLASS Member with itemized wage statements that
2 provided the correct name and address of the legal entity that employed PLAINTIFF and other
3 CALIFORNIA CLASS members, in violation of Cal. Lab. Code § 226(a)(8).

4 118. Further, during the CLASS PERIOD, DEFENDANTS also failed to provide
5 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
6 wage statements in compliance with Cal. Labor Code Section 226.2, which failed to accurately
7 show, among other things: (1) the total hours of compensable rest and recovery periods; and (2)
8 the total hours of other nonproductive time, the rate of compensation for the nonproductive time
9 and the gross wages paid for the nonproductive time during the applicable pay period.

10 119. PLAINTIFFS and the members of the CALIFORNIA CLASS were injured by
11 DEFENDANTS' violations in that they could not promptly and easily determine from the wage
12 statement alone, the amount of gross or net wages paid, the total hours worked, the number pf
13 piece-rate units earned and any applicable piece-rate, all applicable hourly rates in effect during
14 the pay period and the corresponding number of hours worked at each hourly rate to the employee
15 during the applicable pay period.

16 120. DEFENDANTS violations of Cal. Labor Code § 226 and 226.2 were knowing and
17 intentional in that DEFENDANTS willfully intended to issue wage statements that were out of
18 compliance with § 226 and 226.2.

19 121. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor
20 Code § 226 and 226.2, causing injury and damages to the PLAINTIFF and the other members of
21 the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended
22 calculating the correct rates for the overtime worked and the amount of employment taxes which
23 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.
24 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
25 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
26 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
27 pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor
28 Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more

1 than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
2 CALIFORNIA CLASS herein).

3 **SEVENTH CAUSE OF ACTION**

4 **Failure To Pay Wages When Due**

5 **(Cal. Lab. Code §§ 203)**

6 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

9 123. Cal. Lab. Code § 200 provides, in relevant part, that:

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

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

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

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

1 date of the mailing shall constitute the date of payment for purposes
2 of the requirement to provide payment within 72 hours of the notice
3 of quitting.

4 126. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
5 Members' employment contract.

6 127. Cal. Lab. Code § 203 provides, in relevant part, that:

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

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14 128. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
15 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

16 129. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
17 members of the CALIFORNIA CLASS whose employment has terminated and who have unpaid
18 minimum and/or overtime wages and/or missed meal and rest breaks without being paid the
19 legally required penalties by DEFENDANT, PLAINTIFF demands up to thirty days of pay as
20 penalty for not timely paying all wages due at time of termination for all employees who
21 terminated employment during the CLASS PERIOD plus interest and statutory costs as allowed
22 by law.

23 **EIGHTH CAUSE OF ACTION**

24 **Failure To Reimburse Employees For Required Expenses**

25 **(Cal. Lab. Code §§ 2802)**

26 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

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

1 Complaint.

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

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

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

26 133. PLAINTIFF therefore demands reimbursement on behalf of the members of the
27 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
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1 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with
2 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

3 **PRAYER FOR RELIEF**

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

6 1. On behalf of the CALIFORNIA CLASS:

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

17 2. On behalf of the CALIFORNIA CLASS:

- 18 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
19 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
20 pursuant to Cal. Code of Civ. Proc. § 382;
21 b. Compensatory damages, according to proof at trial, including compensatory
22 damages for overtime compensation and separately owed rest periods, due to
23 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
24 applicable CLASS PERIOD plus interest thereon at the statutory rate;
25 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
26 the applicable IWC Wage Order;
27 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
28 which a violation occurs and one hundred dollars (\$100) per each member of the

CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226

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

3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: February 7, 2023

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: February 7, 2023

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade
Attorney for PLAINTIFF