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Attorneys for Plaintiff JOHN KNEISLY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

JOHN KNEISLY, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

S R MACHINING, INC., a California
Corporation; S R MACHINING-
PROPERTIES, LLC, a California Limited
Liability Company; and DOES 1-50, Inclusive,

Defendants.

Case No: CVRI2201491

**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 WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN

VIOLATION OF CALIFORNIA LABOR
CODE §2802.

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

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant S R MACHINING, INC. 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. Defendant S R MACHINING-PROPERTIES LLC is a California Limited Liability Company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Riverside.

3. Defendant S R Machining, Inc. and Defendant S R Machining-Properties LLC were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

4. DEFENDANTS manufacture and produce CNC machining of plastics, alloys and metals for the aerospace, industrial and commercial, medical and automotive industries/sectors throughout the county of Riverside.

5. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANT by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this First Amended 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 DEFENDANT named in this First Amended Complaint, including DOES 1 through 50, inclusive, (hereinafter collectively “DEFENDANTS” and/or

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

3 6. The agents, servants, and/or employees of the DEFENDANT and each of them
4 acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority
5 as the agent, servant and/or employee of the Defendant, and personally participated in the conduct
6 alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
7 Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and
8 all DEFENDANT 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 Defendant’s agents, servants and/or employees.

11 7. 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 8. 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 9. PLAINTIFF was employed by DEFENDANT in California from May 15, 2008 to
23 May 14, 2020 and at all times was classified by DEFENDANT as a non-exempt employee, paid
24 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
25 minimum and overtime wages due for all time worked.

26 10. PLAINTIFF brings this Class Action on behalf of himself and a California class,
27 defined as all persons who are or previously were employed by S R Machining, Inc. and/or S R
28 Machining-Properties LLC in California and classified as non-exempt employees (the
“CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing
of this First Amended Complaint and ending on the date as determined by the Court (the “CLASS

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

3 11. PLAINTIFF brings this Class Action on behalf of himself 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 12. DEFENDANT’s uniform policies and practices alleged herein were unlawful,
15 unfair, and deceptive business practices whereby DEFENDANT retained and continues to retain
16 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

22 **JURISDICTION AND VENUE**

23 14. This Court 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 15. 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 DEFENDANT and
DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities

1 in this County and/or conducts substantial business in this County, and (ii) committed the
2 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

3 **THE CONDUCT**

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

20 **A. Meal Period Violations**

21 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
22 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
23 meaning the time during which an employee is subject to the control of an employer, including
24 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
25 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
26 without paying them for all the time they were under DEFENDANT's control. Specifically, as a
27 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
28 DEFENDANT required PLAINTIFF to work during what was supposed to be PLAINTIFF's off-

1 duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial
2 lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
3 minimum wage and overtime wages by regularly working without their time being accurately
4 recorded and without compensation at the applicable minimum wage and overtime rates.
5 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
6 CLASS Members for all time worked is evidenced by DEFENDANT's business records.

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

22 **B. Rest Period Violations**

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

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

C. Unreimbursed Business Expenses

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

21. In the course of their employment, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance of their job duties as employees for DEFENDANT. But for the use of their own personal cell phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential job duties. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in the course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA

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

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

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

7 23. During the CLASS PERIOD, from time-to-time DEFENDANT required
8 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift and post-shift
9 work, including but not limited to, undergoing COVID-19 health screenings, which included
10 temperature checks and health questionnaires before the beginning of his shift, and spending time
11 under DEFENDANT's control for which he was not compensated. Additionally, PLAINTIFF
12 from time to time would be required to assist team members after clocking out or be required to
13 fix crashed machines before leaving. This resulted in PLAINTIFF and other members of the
14 CALIFORNIA CLASS to have to work while off-the-clock.

15 24. DEFENDANT directed and directly benefited from the uncompensated off-the-
16 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

17 25. DEFENDANT controlled the work schedules, duties, protocols, applications,
18 assignments, and employment conditions of PLAINTIFF and the other members of the
19 CALIFORNIA CLASS.

20 26. DEFENDANT was able to track the amount of time PLAINTIFF and the other
21 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
22 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
23 wages earned and owed for all the work they performed, including submitting to pre-shift and
24 post-shift work, including COVID-19 health screenings, fixing machine crashes, and assisting
25 team members.

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

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

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

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

13 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
14 **Sick Pay**

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

24 32. State law provides that employees must be paid overtime at one-and-one-half times
25 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were
26 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
27 employee's performance.
28

1 33. The second component of PLAINTIFF's and other CALIFORNIA CLASS
2 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
3 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
4 DEFENDANT. The non-discretionary bonus program provided all employees paid on an hourly
5 basis with bonus compensation when the employees met the various performance goals set by
6 DEFENDANT.

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

25 35. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
27 matter of company policy, practice and procedure, intentionally and knowingly failed to
28 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate

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

8 **F. Violations for Untimely Payment of Wages**

9 36. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed
10 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
11 paid not more than seven calendar days following the close of the payroll period. Cal. Lab. Code
12 § 210 provides:

13 [I]n addition to, and entirely independent and apart from, any other penalty
14 provided in this article, every person who fails to pay the wages of each employee
15 as provided in Sections. . . .204. . .shall be subject to a civil penalty as follows: (1)
16 For any initial violation, one hundred dollars (\$100) for each failure to pay each
employee; (2) For each subsequent violation, or any willful or intentional violation,
two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent
of the amount unlawfully withheld.

17 37. DEFENDANT from time to time failed to pay PLAINTIFF and members of the
18 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll
19 period in accordance with Cal. Lab. Code § 204(d).

20 **G. Unpaid Vacation Time**

21 38. Cal. Lab. Code § 227.3 provides, whenever a contract of employment or employer
22 policy provides for paid vacations, and an employee is terminated without having taken off his
23 vested vacation time, all vested vacation time shall be paid to him as wages at this final rate in
24 accordance with such contract of employment.

25 39. Specifically, DEFENDANT failed to pay PLAINTIFF his accrued vacation hours
26 upon termination. DEFENDANT maintained a policy that provided employees with paid time
27 off, however failed to pay PLAINTIFF and other CALIFORNIA CLASS members their accrued
28 vacation time upon termination. As a result, PLAINTIFF and CALIFORNIA CLASS members

1 forfeited wages owed to them by DEFENDANT in accordance with Cal. Lab. Code Sections
2 227.3, 201, and/or 203.

3 **H. Unlawful Rounding Violations**

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

16 41. Further, the mutability of DEFENDANT'S timekeeping system and unlawful
17 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
18 being inaccurately recorded. As a result, from time to time, DEFENDANT'S unlawful rounding
19 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
20 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
21 duty meal break. Additionally, DEFENDANT'S unlawful rounding policy and practice caused
22 PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT
23 for more than ten (10) hours during a shift without receiving a second off-duty meal break.

24 42. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
25 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
26 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
27 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
28 provide PLAINTIFF with a second off-duty meal period each workday in which he was required

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

12 **I. CLASS ACTION ALLEGATIONS**

13 43. PLAINTIFF brings this Class Action on behalf of himself and a California class,
14 defined as all persons who are or previously were employed by S R Machining, Inc. and/or S R
15 Machining-Properties LLC in California and classified as non-exempt employees (the
16 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing
17 of this First Amended Complaint and ending on the date as determined by the Court (the "CLASS
18 PERIOD").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 **FIRST CAUSE OF ACTION**

12 **Unlawful Business Practices**

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

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

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

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

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

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

1 59. By the conduct alleged herein, DEFENDANT has engaged and continues to
2 engage in a business practice which violates California law, including but not limited to, the
3 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
4 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
5 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
6 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
7 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

20 62. 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 63. By the conduct alleged herein, DEFENDANT's practices were also unfair and
25 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
26 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
27 as required by Cal. Lab. Code §§ 226.7 and 512.
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1 64. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
2 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
3 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
4 each workday in which a second off-duty meal period was not timely provided for each ten (10)
5 hours of work.

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

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

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

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

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

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

8 **SECOND CAUSE OF ACTION**

9 **Failure To Pay Minimum Wages**

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

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

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

15 72. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
16 for DEFENDANT’S willful and intentional violations of the California Labor Code and the
17 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate
18 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

21 74. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
22 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
23 the minimum so fixed is unlawful.

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

26 76. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
27 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
28 worked. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and

1 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS.

3 77. 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 in regards to minimum wage pay.

7 78. In committing these violations of the California Labor Code, DEFENDANT
8 inaccurately calculated the amount of 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 79. 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 80. During the CLASS PERIOD, PLAINTIFF and the other members of the
17 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
18 failure to pay all earned wages.

19 81. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
20 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
21 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 82. DEFENDANT knew or should have known that PLAINTIFF and the other
25 members of the CALIFORNIA CLASS are 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 corporate 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 83. 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 84. 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 85. 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 First
28 Amended Complaint.

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

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

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

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

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

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

26 92. In committing these violations of the California Labor Code, DEFENDANT
27 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
28 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal

1 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
2 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
3 regulations.

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

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

15 95. During the CLASS PERIOD, PLAINTIFF and the other members of the
16 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
17 constituting a failure to pay all earned wages.

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

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

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

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

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

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104. 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)

105. 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 First Amended Complaint.

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

107. 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 rest period, in accordance with the applicable Wage Order, one

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Pay Wages When Due**

8 **(Cal. Lab. Code §§ 203)**

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

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

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

14 As used in this article:

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

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

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

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

1 113. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
2 Members' employment contract.

3 114. Cal. Lab. Code § 203 provides:

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

7 115. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
8 terminated, and DEFENDANT has not tendered payment of wages to these employees who were
9 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
10 required by law.

11 116. DEFENDANT failed to pay PLAINTIFF his accrued vacation hours upon
12 termination. DEFENDANT maintained a policy that provided employees with paid time off,
13 however failed to pay PLAINTIFF and other CALIFORNIA CLASS members their accrued
14 vacation time upon termination. As a result, PLAINTIFF and CALIFORNIA CLASS members
15 forfeited wages owed to them by DEFENDANT in accordance with Cal. Lab. Code Sections
16 227.3, 201, and/or 203.

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

22 **SEVENTH CAUSE OF ACTION**

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

24 **(Cal. Lab. Code §§ 2802)**

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

26 118. 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 First
28 Amended Complaint.

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

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

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

23 121. PLAINTIFF therefore demands reimbursement on behalf of the members of the
24 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
25 on behalf of DEFENDANT, or his/her obedience to the directions of DEFENDANT, with interest
26 at the statutory rate and costs under Cal. Lab. Code § 2802.
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EIGHTH CAUSE OF ACTION
VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT
(Cal. Lab. Code §§2698 et seq.)
(Alleged by PLAINTIFF against all Defendants)

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

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

124. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals who are or previously were employed by DEFENDANTS and classified as non-exempt employees in California during the time period of October 10, 2021, until October 10, 2022. (the "AGGRIEVED EMPLOYEES").

125. On January 24, 2023, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these allegations to the First Amended Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may now commence a representative civil action under

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

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

17 **PRAYER FOR RELIEF**

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

20 1. On behalf of the CALIFORNIA CLASS:

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

1 for restitution of the sums incidental to DEFENDANT's violations due to
2 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

3 2. On behalf of the CALIFORNIA CLASS:

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

21 3. On Plaintiff's Eighth Cause of Action

- 22 a. For all special damages which were sustained as a result of DEFENDANTS'
23 conduct, including but not limited to, back pay, front pay, lost compensation and
24 job benefits that PLAINTIFF would have received but for the practices of
25 DEFENDANTS;
- 26 b. For all exemplary damages, according to proof, which were sustained as a result of
27 DEFENDANTS' conduct;
- 28 c. An award of interest, including prejudgment interest at the legal rate;

- 1 d. Such other and further relief as the Court deems just and equitable; and
2 e. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
3 4. On behalf of the State of California and with respect to all AGGRIEVED
4 EMPLOYEES:
5 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
6 General Act of 2004;
7 5. On all claims:
8 a. An award of interest, including prejudgment interest at the legal rate;
9 b. Such other and further relief as the Court deems just and equitable; and
10 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
11

12 DATED: January 27, 2023

13 **ZAKAY LAW GROUP, APLC**

14
15 By: 
16 Shani O. Zakay
17 Attorney for PLAINTIFF
18

19 **DEMAND FOR A JURY TRIAL**

20 PLAINTIFF demands a jury trial on issues triable to a jury.
21

22 DATED: January 27, 2023

23 **ZAKAY LAW GROUP, APLC**

24
25 By: 
26 Shani O. Zakay
27 Attorney for PLAINTIFF
28

EXHIBIT 1

January 24, 2023

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

S R MACHINING, INC., and
S R MACHINING-PROPERTIES, LLC
c/o Lawrence T Kaford
640 Parkridge Avenue
Norco, CA 92860

Sent via Certified Mail and Return Receipt No. 7022 2410 0003 0424 3231

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

Dear Sir/Madam:

Our offices represent Plaintiff JOHN KNEISLY (“Plaintiff”) in a proposed lawsuit against Defendants S R MACHINING, INC., a California Corporation, (“Defendant S R Machining”) and S R MACHINING-PROPERTIES, LLC (“Defendant Machining-Properties”) (collectively, hereinafter, “Defendants”). Plaintiff was employed by Defendants in California from May of 2008 to May of 2020 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. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Defendants also failed to reimburse their employees for personally incurred business expenses. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence, Plaintiff contends that Defendants failed to fully compensate him and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendants’ conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 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 employees who are or previously were directly employed by S R Machining, Inc. and/or S R Machining-Properties LLC and performed work in California during the relevant claim period.

A true and correct copy of the proposed First Amended Complaint is attached hereto. The First Amended 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 Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached First Amended Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

This notice is provided to enable Plaintiff to proceed with the First Amended Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the First Amended 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

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

Jean-Claude Lapuyade, Esq.

ZAKAY LAW GROUP, APLC

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scastillo@jcl-lawfirm.com

Attorneys for Plaintiff JOHN KNEISLY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

JOHN KNEISLY, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

S R MACHINING, INC., a California
Corporation; S R MACHINING-
PROPERTIES, LLC, a California Limited
Liability Company; and DOES 1-50, Inclusive,

Defendants.

Case No: CVRI2201491

**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 WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN

VIOLATION OF CALIFORNIA LABOR
CODE §2802.

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

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant S R MACHINING, INC. 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. Defendant S R MACHINING-PROPERTIES LLC is a California Limited Liability Company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Riverside.

3. Defendant S R Machining, Inc. and Defendant S R Machining-Properties LLC were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

4. DEFENDANTS manufacture and produce CNC machining of plastics, alloys and metals for the aerospace, industrial and commercial, medical and automotive industries/sectors throughout the county of Riverside.

5. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANT by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this First Amended 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 DEFENDANT named in this First Amended Complaint, including DOES 1 through 50, inclusive, (hereinafter collectively “DEFENDANTS” and/or

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

3 6. The agents, servants, and/or employees of the DEFENDANT and each of them
4 acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority
5 as the agent, servant and/or employee of the Defendant, and personally participated in the conduct
6 alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
7 Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and
8 all DEFENDANT 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 Defendant’s agents, servants and/or employees.

11 7. 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 8. 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 9. PLAINTIFF was employed by DEFENDANT in California from May 15, 2008 to
23 May 14, 2020 and at all times was classified by DEFENDANT as a non-exempt employee, paid
24 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
25 minimum and overtime wages due for all time worked.

26 10. PLAINTIFF brings this Class Action on behalf of himself and a California class,
27 defined as all persons who are or previously were employed by S R Machining, Inc. and/or S R
28 Machining-Properties LLC in California and classified as non-exempt employees (the
“CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing
of this First Amended Complaint and ending on the date as determined by the Court (the “CLASS

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

3 11. PLAINTIFF brings this Class Action on behalf of himself 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 12. DEFENDANT’s uniform policies and practices alleged herein were unlawful,
15 unfair, and deceptive business practices whereby DEFENDANT retained and continues to retain
16 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

22 **JURISDICTION AND VENUE**

23 14. This Court 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 15. 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 DEFENDANT and
DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities

1 in this County and/or conducts substantial business in this County, and (ii) committed the
2 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

3 **THE CONDUCT**

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

20 **A. Meal Period Violations**

21 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
22 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
23 meaning the time during which an employee is subject to the control of an employer, including
24 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
25 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
26 without paying them for all the time they were under DEFENDANT's control. Specifically, as a
27 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
28 DEFENDANT required PLAINTIFF to work during what was supposed to be PLAINTIFF's off-

1 duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial
2 lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
3 minimum wage and overtime wages by regularly working without their time being accurately
4 recorded and without compensation at the applicable minimum wage and overtime rates.
5 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
6 CLASS Members for all time worked is evidenced by DEFENDANT's business records.

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

22 **B. Rest Period Violations**

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

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

C. Unreimbursed Business Expenses

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

21. In the course of their employment, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance of their job duties as employees for DEFENDANT. But for the use of their own personal cell phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential job duties. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in the course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA

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

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

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

7 23. During the CLASS PERIOD, from time-to-time DEFENDANT required
8 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift and post-shift
9 work, including but not limited to, undergoing COVID-19 health screenings, which included
10 temperature checks and health questionnaires before the beginning of his shift, and spending time
11 under DEFENDANT's control for which he was not compensated. Additionally, PLAINTIFF
12 from time to time would be required to assist team members after clocking out or be required to
13 fix crashed machines before leaving. This resulted in PLAINTIFF and other members of the
14 CALIFORNIA CLASS to have to work while off-the-clock.

15 24. DEFENDANT directed and directly benefited from the uncompensated off-the-
16 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

17 25. DEFENDANT controlled the work schedules, duties, protocols, applications,
18 assignments, and employment conditions of PLAINTIFF and the other members of the
19 CALIFORNIA CLASS.

20 26. DEFENDANT was able to track the amount of time PLAINTIFF and the other
21 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
22 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
23 wages earned and owed for all the work they performed, including submitting to pre-shift and
24 post-shift work, including COVID-19 health screenings, fixing machine crashes, and assisting
25 team members.

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

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

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

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

13 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
14 **Sick Pay**

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

24 32. State law provides that employees must be paid overtime at one-and-one-half times
25 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were
26 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
27 employee's performance.
28

1 33. The second component of PLAINTIFF's and other CALIFORNIA CLASS
2 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
3 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
4 DEFENDANT. The non-discretionary bonus program provided all employees paid on an hourly
5 basis with bonus compensation when the employees met the various performance goals set by
6 DEFENDANT.

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

25 35. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
27 matter of company policy, practice and procedure, intentionally and knowingly failed to
28 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate

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

8 **F. Violations for Untimely Payment of Wages**

9 36. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed
10 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
11 paid not more than seven calendar days following the close of the payroll period. Cal. Lab. Code
12 § 210 provides:

13 [I]n addition to, and entirely independent and apart from, any other penalty
14 provided in this article, every person who fails to pay the wages of each employee
15 as provided in Sections. . . .204. . .shall be subject to a civil penalty as follows: (1)
16 For any initial violation, one hundred dollars (\$100) for each failure to pay each
employee; (2) For each subsequent violation, or any willful or intentional violation,
two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent
of the amount unlawfully withheld.

17 37. DEFENDANT from time to time failed to pay PLAINTIFF and members of the
18 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll
19 period in accordance with Cal. Lab. Code § 204(d).

20 **G. Unpaid Vacation Time**

21 38. Cal. Lab. Code § 227.3 provides, whenever a contract of employment or employer
22 policy provides for paid vacations, and an employee is terminated without having taken off his
23 vested vacation time, all vested vacation time shall be paid to him as wages at this final rate in
24 accordance with such contract of employment.

25 39. Specifically, DEFENDANT failed to pay PLAINTIFF his accrued vacation hours
26 upon termination. DEFENDANT maintained a policy that provided employees with paid time
27 off, however failed to pay PLAINTIFF and other CALIFORNIA CLASS members their accrued
28 vacation time upon termination. As a result, PLAINTIFF and CALIFORNIA CLASS members

1 forfeited wages owed to them by DEFENDANT in accordance with Cal. Lab. Code Sections
2 227.3, 201, and/or 203.

3 **H. Unlawful Rounding Violations**

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

16 41. Further, the mutability of DEFENDANT'S timekeeping system and unlawful
17 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
18 being inaccurately recorded. As a result, from time to time, DEFENDANT'S unlawful rounding
19 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
20 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
21 duty meal break. Additionally, DEFENDANT'S unlawful rounding policy and practice caused
22 PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT
23 for more than ten (10) hours during a shift without receiving a second off-duty meal break.

24 42. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
25 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
26 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
27 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
28 provide PLAINTIFF with a second off-duty meal period each workday in which he was required

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

12 **I. CLASS ACTION ALLEGATIONS**

13 43. PLAINTIFF brings this Class Action on behalf of himself and a California class,
14 defined as all persons who are or previously were employed by S R Machining, Inc. and/or S R
15 Machining-Properties LLC in California and classified as non-exempt employees (the
16 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing
17 of this First Amended Complaint and ending on the date as determined by the Court (the "CLASS
18 PERIOD").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 59. By the conduct alleged herein, DEFENDANT has engaged and continues to
2 engage in a business practice which violates California law, including but not limited to, the
3 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
4 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
5 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
6 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
7 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

20 62. 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 63. By the conduct alleged herein, DEFENDANT's practices were also unfair and
25 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
26 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
27 as required by Cal. Lab. Code §§ 226.7 and 512.
28

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

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

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

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

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

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

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

8 **SECOND CAUSE OF ACTION**

9 **Failure To Pay Minimum Wages**

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

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

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

15 72. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
16 for DEFENDANT’S willful and intentional violations of the California Labor Code and the
17 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate
18 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

21 74. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
22 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
23 the minimum so fixed is unlawful.

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

26 76. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
27 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
28 worked. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully and

1 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS.

3 77. 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 in regards to minimum wage pay.

7 78. In committing these violations of the California Labor Code, DEFENDANT
8 inaccurately calculated the amount of 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 79. 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 80. During the CLASS PERIOD, PLAINTIFF and the other members of the
17 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
18 failure to pay all earned wages.

19 81. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
20 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
21 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 82. DEFENDANT knew or should have known that PLAINTIFF and the other
25 members of the CALIFORNIA CLASS are 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 corporate 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 83. 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 84. 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 85. 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 First
28 Amended Complaint.

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

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

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

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

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

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

26 92. In committing these violations of the California Labor Code, DEFENDANT
27 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
28 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal

1 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
2 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
3 regulations.

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

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

15 95. During the CLASS PERIOD, PLAINTIFF and the other members of the
16 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
17 constituting a failure to pay all earned wages.

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

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

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

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

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

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104. 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)

105. 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 First Amended Complaint.

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

107. 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 rest period, in accordance with the applicable Wage Order, one

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Pay Wages When Due**

8 **(Cal. Lab. Code §§ 203)**

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

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

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

14 As used in this article:

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

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

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

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

1 113. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
2 Members' employment contract.

3 114. Cal. Lab. Code § 203 provides:

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

7 115. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
8 terminated, and DEFENDANT has not tendered payment of wages to these employees who were
9 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as
10 required by law.

11 116. DEFENDANT failed to pay PLAINTIFF his accrued vacation hours upon
12 termination. DEFENDANT maintained a policy that provided employees with paid time off,
13 however failed to pay PLAINTIFF and other CALIFORNIA CLASS members their accrued
14 vacation time upon termination. As a result, PLAINTIFF and CALIFORNIA CLASS members
15 forfeited wages owed to them by DEFENDANT in accordance with Cal. Lab. Code Sections
16 227.3, 201, and/or 203.

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

22 **SEVENTH CAUSE OF ACTION**

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

24 **(Cal. Lab. Code §§ 2802)**

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

26 118. 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 First
28 Amended Complaint.

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

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

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

23 121. PLAINTIFF therefore demands reimbursement on behalf of the members of the
24 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
25 on behalf of DEFENDANT, or his/her obedience to the directions of DEFENDANT, with interest
26 at the statutory rate and costs under Cal. Lab. Code § 2802.
27
28

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

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

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

124. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals who are or previously were employed by DEFENDANTS and classified as non-exempt employees in California during the time period of October 10, 2021, until October 10, 2022. (the "AGGRIEVED EMPLOYEES").

125. On January 24, 2023, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these allegations to the First Amended Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may now commence a representative civil action under

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

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

17 **PRAYER FOR RELIEF**

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

20 1. On behalf of the CALIFORNIA CLASS:

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

1 for restitution of the sums incidental to DEFENDANT's violations due to
2 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

3 2. On behalf of the CALIFORNIA CLASS:

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

21 3. On Plaintiff's Eighth Cause of Action

- 22 a. For all special damages which were sustained as a result of DEFENDANTS'
23 conduct, including but not limited to, back pay, front pay, lost compensation and
24 job benefits that PLAINTIFF would have received but for the practices of
25 DEFENDANTS;
- 26 b. For all exemplary damages, according to proof, which were sustained as a result of
27 DEFENDANTS' conduct;
- 28 c. An award of interest, including prejudgment interest at the legal rate;

- 1 d. Such other and further relief as the Court deems just and equitable; and
- 2 e. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
- 3 4. On behalf of the State of California and with respect to all AGGRIEVED
- 4 EMPLOYEES:
- 5 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
- 6 General Act of 2004;
- 7 5. On all claims:
- 8 a. An award of interest, including prejudgment interest at the legal rate;
- 9 b. Such other and further relief as the Court deems just and equitable; and
- 10 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
- 11

12 DATED: January __, 2023

13 **ZAKAY LAW GROUP, APLC**

14

15 By: 
16 Shani O. Zakay
17 Attorney for PLAINTIFF

18

19 **DEMAND FOR A JURY TRIAL**

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

21

22 DATED: January __, 2023

23 **ZAKAY LAW GROUP, APLC**

24

25 By: 
26 Shani O. Zakay
27 Attorney for PLAINTIFF

28

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