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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DANIEL ROTH, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

DALENZIE, INC., a California corporation;
SOUTHERN CALIFORNIA HOLDINGS,
INC., a California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No: 37-2022-00030306-CU-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226.
9) VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT AT LABOR CODE SECTIONS 2698 *ET SEQ.*

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant DALENZIE, INC. (“Defendant Dalenzie”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant SOUTHERN CALIFORNIA HOLDINGS, INC. (“Defendant Southern California Holdings”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

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

4. DEFENDANTS own, operate, and/or manage automobile repair businesses throughout the state of California, including in the county of San Diego, where PLAINTIFF worked.

1 5. PLAINTIFF was employed by DEFENDANT in California from February of 2013
2 to April of 2022 as a non-exempt employee, paid in part an hourly basis and non-discretionary
3 bonuses, and entitled to the legally required meal and rest periods and payment of minimum and
4 overtime wages due for all time worked.

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

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

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

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

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

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

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

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

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

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

3 **JURISDICTION AND VENUE**

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

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

12 **THE CONDUCT**

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

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

4 **A. Meal Period Violations**

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

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

duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call. DEFENDANT’s failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by DEFENDANT’s business records. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANT’s strict corporate policy and practice.

B. Rest Period Violations

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

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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 other CALIFORNIA CLASS Members 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

1 are required to indemnify employees for all expenses incurred in the course and scope of their
2 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
3 employee for all necessary expenditures or losses incurred by the employee in direct consequence
4 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
5 even though unlawful, unless the employee, at the time of obeying the directions, believed them
6 to be unlawful."

7 21. In the course of their employment, DEFENDANT required PLAINTIFF and other
8 CALIFORNIA CLASS Members to incur personal expenses for the purchase of equipment and
9 tools as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
10 CALIFORNIA CLASS Members were required to purchase their own equipment and tools in
11 order to perform work related tasks. However, DEFENDANT unlawfully failed to reimburse
12 PLAINTIFF and other CALIFORNIA CLASS Members for the personal expenses incurred for
13 the purchase of such equipment and tools. As a result, in the course of their employment with
14 DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS Members incurred
15 unreimbursed business expenses that included, but were not limited to, costs related to the
16 purchase of equipment and tools, all on behalf of and for the benefit of DEFENDANT.

17 22. Further, California IWC Order No. 4-2001(9)(b) states, "When tools or equipment
18 are required by the employer or are necessary to the performance of a job, such tools and
19 equipment shall be provided and maintained by the employer, except that an employee whose
20 wages are at least two (2) times the minimum wage provided herein may be required to provide
21 and maintain hand tools and equipment customarily required by the trade or craft." From time to
22 time, when DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to
23 supply their own equipment and tools in order to perform their jobs, DEFENDANT failed to pay
24 PLAINTIFF and other CALIFORNIA CLASS Members two times minimum wage as required
25 by the applicable IWC Wage Order.

26 **D. Wage Statement Violations**

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

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

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

15 25. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
16 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
17 Cal. Lab. Code § 226.

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

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

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

27 28. During the CLASS PERIOD, from time-to-time DEFENDANT required
28 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift

1 working. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have
2 to work while off-the-clock.

3 29. During the CASS PERIOD, from time-to-time DEFENDANT required
4 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work on the weekends
5 without allowing PLAINTIFF and other members of the CALIFORNIA CLASS to clock in.

6 30. DEFENDANT directed and directly benefited from the undercompensated off-the-
7 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

8 31. DEFENDANT controlled the work schedules, duties, and protocols, applications,
9 assignments, and employment conditions of PLAINTIFF and the other members of the
10 CALIFORNIA CLASS.

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

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

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

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

25 36. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
26 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and
27 benefit for the time spent working while off-the-clock. DEFENDANT's uniform policy and
28 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all

1 hours worked in accordance with applicable law is evidenced by DEFENDANT's business
2 records.

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

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

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

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

25 40. However, from-time-to-time, when calculating the regular rate of pay, in those pay
26 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
27 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
28 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus

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

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

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

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

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

4 **H. Unlawful Deductions**

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

9 **I. Timekeeping Manipulation**

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

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

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

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

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

25 **CLASS ACTION ALLEGATIONS**

26 49. PLAINTIFF bring this Class Action on behalf of himself, and a California class
27 defined as all persons who are or previously were employed by Defendant Dalenzie and/or
28 Defendant Southern California Holdings in California and classified as non-exempt employees

1 (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the
2 filing of this Complaint and ending on the date as determined by the Court (the “CLASS
3 PERIOD”).

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

10 51. The members of the class are so numerous that joinder of all class members is
11 impractical.

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

- 21 a. Whether DEFENDANT maintained legally compliant meal period policies and
22 practices;
- 23 b. Whether DEFENDANT maintained legally compliant rest period policies and
24 practices;
- 25 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
26 Members accurate premium payments for missed meal and rest periods;
- 27 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
28 Members accurate overtime wages;

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

53. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANT's conduct and actions alleged herein.

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

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

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

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

58. There is a strong community of interest among PLAINTIFF and the members of the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are

1 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
2 sustained.

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

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

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

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

24 **FIRST CAUSE OF ACTION**

25 **Unlawful Business Practices**

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

27 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**
28

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

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

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

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

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

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

 67. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
mandated meal and rest periods and the required amount of compensation for missed meal and

1 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
2 necessary business expenses incurred, due to a systematic business practice that cannot be
3 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
4 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
5 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
6 restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

22 **SECOND CAUSE OF ACTION**

23 **Failure To Pay Minimum Wages**

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

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

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

1 78. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
2 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
3 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
4 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

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

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

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

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

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

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

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

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

27 90. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
28 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the

1 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
2 California Labor Code and/or other applicable statutes. To the extent minimum wage
3 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
4 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
5 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
6 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
7 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
8 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
9 recover statutory costs.

10 **THIRD CAUSE OF ACTION**

11 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

1 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
2 than those fixed by the Industrial Welfare Commission is unlawful.

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

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

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

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

22 100. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
23 from the overtime requirements of the law. None of these exemptions are applicable to
24 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
25 other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
26 agreement that would preclude the causes of action contained herein this Complaint. Rather,
27 PLAINTIFF bring this Action on behalf of himself, and the CALIFORNIA CLASS, based on
28

1 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of
2 California.

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

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

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

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

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

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

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

15 **FOURTH CAUSE OF ACTION**

16 **Failure To Provide Required Meal Periods**

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

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

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

22 108. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
23 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
24 required by the applicable Wage Order and Labor Code. The nature of the work performed by
25 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
26 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
27 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
28 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's

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

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

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

16 **FIFTH CAUSE OF ACTION**

17 **Failure To Provide Required Rest Periods**

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

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

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

23 112. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
24 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
25 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
26 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
27 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
28 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.

1 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
2 wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other
3 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
4 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate
5 PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the
6 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
7 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
8 periods is evidenced by DEFENDANT's business records.

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

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

17 **SIXTH CAUSE OF ACTION**

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

19 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

117. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses which included, but were not limited to, personal expenses incurred for the purchase of equipment and tools all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their own equipment and tools to execute their essential job duties on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting from the purchase of such equipment and tools for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

SEVENTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

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

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

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

- 3 a. Gross wages earned,
- 4 b. (2) total hours worked by the employee, except for any employee whose
5 compensation is solely based on a salary and who is exempt from payment of
6 overtime under subdivision (a) of Section 515 or any applicable order of the
7 Industrial Welfare Commission,
- 8 c. the number of piece-rate units earned and any applicable piece rate if the employee
9 is paid on a piece-rate basis,
- 10 d. all deductions, provided that all deductions made on written orders of the employee
11 may be aggregated and shown as one item,
- 12 e. net wages earned,
- 13 f. the inclusive dates of the period for which the employee is paid,
- 14 g. the name of the employee and his or her social security number, except that by
15 January 1, 2008, only the last four digits of his or her social security number of an
16 employee identification number other than social security number may be shown
17 on the itemized statement,
- 18 h. the name and address of the legal entity that is the employer, and
- 19 i. all applicable hourly rates in effect during the pay period and the corresponding
20 number of hours worked at each hourly rate by the employee.

21 121. When DEFENDANT did not accurately record PLAINTIFF’S and other
22 CALIFORNIA CLASS Members’ missed meal and rest breaks, or were paid inaccurate missed
23 meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal.
24 Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA
25 CLASS Members with complete and accurate wage statements which failed to show, among other
26 things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked
27 and all applicable hourly rates in effect during the pay period and the corresponding amount of
28

1 time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal
2 and rest periods.

3 122. In addition to the foregoing, DEFENDANT failed to provide itemized wage
4 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
5 requirements of California Labor Code Section 226.

6 123. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
7 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
8 CLASS. These damages include, but are not limited to, costs expended calculating the correct
9 wages for all missed meal and rest breaks and the amount of employment taxes which were not
10 properly paid to state and federal tax authorities. These damages are difficult to estimate.
11 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
12 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
13 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
14 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
15 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
16 of the CALIFORNIA CLASS herein).

17 **EIGHTH CAUSE OF ACTION**

18 **Failure To Pay Wages When Due**

19 **(Cal. Lab. Code § 203)**

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

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

24 125. Cal. Lab. Code § 200 provides that:

25 As used in this article:

- 26 (d) "Wages" includes all amounts for labor performed by employees of every
27 description, whether the amount is fixed or ascertained by the standard of time,
28 task, piece, Commission basis, or other method of calculation.

1 (e) "Labor" includes labor, work, or service whether rendered or performed under
2 contract, subcontract, partnership, station plan, or other agreement if the to be
3 paid for is performed personally by the person demanding payment.

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

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

8 If an employee not having a written contract for a definite period quits his or her
9 employment, his or her wages shall become due and payable not later than 72 hours
10 thereafter, unless the employee has given 72 hours previous notice of his or her intention
11 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
12 Notwithstanding any other provision of law, an employee who quits without providing a
13 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
14 designates a mailing address. The date of the mailing shall constitute the date of payment
15 for purposes of the requirement to provide payment within 72 hours of the notice of
16 quitting.

17 128. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS
18 Members' employment contract.

19 129. Cal. Lab. Code § 203 provides:

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

25 130. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
26 terminated, and DEFENDANT has not tendered payment of wages to these employees who
27 missed meal and rest breaks, as required by law.

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

NINTH CAUSE OF ACTION

For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")

[Cal. Lab. Code §§ 2698, et seq.]

1 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

2 132. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
3 herein, the prior paragraphs of this Complaint.

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

13 134. PLAINTIFF brings this Representative Action on behalf of the State of California
14 with respect to himself and all other current and former non-exempt employees employed by
15 DEFENDANT during the time period of July 7, 2021, until the present (the AGGRIEVED
16 EMPLOYEES”).

17 135. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
18 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANT within the
19 meaning of Labor Code Section 2699(c).

20 136. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,
21 like PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil
22 action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

23 137. PLAINTIFF complied with the procedures for bringing suit specified in Labor
24 Code Section 2699.3. By certified letter, return receipt requested, dated July 7, 2022, PLAINTIFF
25 gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to
26 DEENDANT of the specific provisions of the Labor Code alleged to have been violated, including
27 the facts and theories to support the alleged violations. (See Exhibit #1.)
28

1 138. As of the date of this complaint, more than sixty-five (65) days after serving the
2 LWDA with notice of DEFENDANT’S violations, the LWDA has not provided any notice by
3 certified mail of its intent to investigate the DEFENDANT’S alleged violations as mandated by
4 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section
5 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause of action.

6 139. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
7 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of
8 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
9 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and
10 2804 in the following amounts:

11 a. For violation of Labor Code Sections 201, 202, 203, and 204,
12 one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per
13 pay period for the initial violation and two hundred dollars (\$200) for
14 AGGRIEVED EMPLOYEE per pay period for each subsequent
15 violation [penalty per Labor Code Section 2699(f)(2)];

16 b. For violations of Labor Code Section 226(a), a civil penalty
17 in the amount of two hundred fifty dollars (\$250) for each
18 AGGRIEVED EMPLOYEE for any initial violation and one
19 thousand dollars for each subsequent violation [penalty per Labor
20 Code Section 226.3];

21 c. For violations of Labor Code Sections 204, a civil penalty in
22 the amount of one hundred dollars (\$100) for each AGGRIEVED
23 EMPLOYEE for any initial violation and two hundred dollars (\$200)
24 for AGGRIEVED EMPLOYEE for each subsequent violation
25 [penalty per Labor Code Section 210];

26 d. For violations of Labor Code Sections 226.7, 510 and 512, a
27 civil penalty in the amount of fifty dollars (\$50) for each underpaid
28 AGGRIEVED EMPLOYEE for the initial violation and hundred

dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE per violation in an initial citation and one thousand dollars (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 226.3];

f. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section].

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

141. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF period of July 7, 2021 until the present, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least

one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

2. On behalf of the CALIFORNIA CLASS:

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

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

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

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

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

4. On all claims:

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

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

c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: September 12, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: September 12, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1



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Sydney Castillo-Johnson, Esq.
scastillo@jcl-lawfirm.com

July 7, 2022

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

OCEANSIDE TRANSMISSION, INC.

c/o Dean Kuhn
229 S. Coast Hwy
Oceanside, CA 92054

Sent via Certified Mail and Return Receipt 7021 2720 0000 9972 7317

DALENZIE, INC.

c/o Dean Kuhn
3854 Blue Brid Canyon Ct
Vista, CA 92084

Sent via Certified Mail and Return Receipt 7021 2720 0000 9972 7324

SOUTHERN CALIFORNIA HOLDINGS, INC.

c/o Dean Kuhn
229 S. Coast Hwy
Oceanside, CA 92054

Sent via Certified Mail and Return Receipt 7021 2720 0000 9972 7508

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, 226.8, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and 3357, 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 DANIEL ROTH ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendants OCEANSIDE TRANSMISSION, INC. ("Defendant Oceanside Transmission"), DALENZIE, INC. ("Defendant Dalenzie"), and SOUTHERN CALIFORNIA HOLDINGS, INC. ("Defendant Southern California Holdings") (collectively "Defendants"). Plaintiff was employed by Defendants in California from February of 2013 to April of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and

rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence, Plaintiff contend that Defendants failed to fully compensate him and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, 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, 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 worked for Defendant Oceanside Transmission and/or Defendant Dalenzie and/or Defendant Southern California Holdings in California during the relevant claim period.

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

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

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General 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 black ink, appearing to read 'JC Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DANIEL ROTH, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

OCEANSIDE TRANSMISSION, INC., a
California corporation; DALENZIE, INC., a
California corporation SOUTHERN
CALIFORNIA HOLDINGS, INC., a California
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226.

DEMAND FOR A JURY TRIAL

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

PRELIMINARY ALLEGATIONS

1. Defendant OCEANSIDE TRANSMISSION, INC. (“Defendant Oceanside Transmission”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant DALENZIE, INC. (“Defendant Dalenzie”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant SOUTHERN CALIFORNIA HOLDINGS, INC. (“Defendant Southern California Holdings”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

4. Defendant Oceanside Transmission, Defendant Dalenzie, and Defendant Southern California Holdings were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

1 5. DEFENDANTS own, operate, and/or manage automobile repair businesses
2 throughout the state of California, including in the county of San Diego, where PLAINTIFF
3 worked.

4 6. PLAINTIFF was employed by DEFENDANT in California from February of 2013
5 to April of 2022 as a non-exempt employee, paid in part an hourly basis and non-discretionary
6 bonuses, and entitled to the legally required meal and rest periods and payment of minimum and
7 overtime wages due for all time worked.

8 7. PLAINTIFF brings this Class Action on behalf of himself and a California class,
9 defined as all persons who are or previously were employed by Defendant Oceanside
10 Transmission and/or Defendant Dalenzie and/or Defendant Southern California Holdings in
11 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
12 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
13 date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
14 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
15 (\$5,000,000.00).

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

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

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

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

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

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

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

10 **A. Meal Period Violations**

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

25 19. From time to time during the CLASS PERIOD, as a result of their rigorous work
26 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
27 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
28 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other

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

13 **B. Rest Period Violations**

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

28 ///

1 **C. Unreimbursed Business Expenses**

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

13 22. In the course of their employment, DEFENDANT required PLAINTIFF and other
14 CALIFORNIA CLASS Members to incur personal expenses for the purchase of equipment and
15 tools as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
16 CALIFORNIA CLASS Members were required to purchase their own equipment and tools in
17 order to perform work related tasks. However, DEFENDANT unlawfully failed to reimburse
18 PLAINTIFF and other CALIFORNIA CLASS Members for the personal expenses incurred for
19 the purchase of such equipment and tools. As a result, in the course of their employment with
20 DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS Members incurred
21 unreimbursed business expenses that included, but were not limited to, costs related to the
22 purchase of equipment and tools, all on behalf of and for the benefit of DEFENDANT.

23 23. Further, California IWC Order No. 4-2001(9)(b) states, "When tools or equipment
24 are required by the employer or are necessary to the performance of a job, such tools and
25 equipment shall be provided and maintained by the employer, except that an employee whose
26 wages are at least two (2) times the minimum wage provided herein may be required to provide
27 and maintain hand tools and equipment customarily required by the trade or craft." From time to
28 time, when DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to

1 supply their own equipment and tools in order to perform their jobs, DEFENDANT failed to pay
2 PLAINTIFF and other CALIFORNIA CLASS Members two times minimum wage as required
3 by the applicable IWC Wage Order.

4 **D. Wage Statement Violations**

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

13 25. From time to time during the CLASS PERIOD, when PLAINTIFF and other
14 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
15 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also
16 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
17 accurate wage statements which failed to show, among other things, all deductions, the total hours
18 worked and all applicable hourly rates in effect during the pay period, and the corresponding
19 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
20 meal and rest periods.

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

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

28 ///

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

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

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

9 30. During the CASS PERIOD, from time-to-time DEFENDANT required
10 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work on the weekends
11 without allowing PLAINTIFF and other members of the CALIFORNIA CLASS to clock in.

12 31. DEFENDANT directed and directly benefited from the undercompensated off-the-
13 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

14 32. DEFENDANT controlled the work schedules, duties, and protocols, applications,
15 assignments, and employment conditions of PLAINTIFF and the other members of the
16 CALIFORNIA CLASS.

17 33. DEFENDANT was able to track the amount of time PLAINTIFF and the other
18 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
19 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
20 wages earned and owed for all the work they performed.

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

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

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

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

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

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

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

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

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

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

21 42. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
23 matter of company policy, practice, and procedure, intentionally and knowingly failed to
24 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
25 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
26 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
27 of the correct overtime and double time compensation, meal and rest period premiums, and sick
28 pay as required by California law which allowed DEFENDANT to illegally profit and gain an

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

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

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

10 **H. Unlawful Deductions**

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

15 **I. Timekeeping Manipulation**

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

25 46. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
26 time-to-time, forfeited time worked by working without their time being accurately recorded and
27 without compensation at the applicable pay rates.
28

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

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

14 49. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
15 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
16 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
17 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
18 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
19 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
20 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
21 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was
22 supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
23 without additional compensation and in accordance with DEFENDANT'S strict corporate policy
24 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
25 comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF
26 for required business expenses related to the personal expenses incurred for the purchase of
27 equipment and tools, on behalf of and in furtherance of his employment with DEFENDANT. To
28 date, DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time

1 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.
2 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
3 \$75,000.

4 **CLASS ACTION ALLEGATIONS**

5 50. PLAINTIFF bring this Class Action on behalf of himself, and a California class
6 defined as all persons who are or previously were employed by Defendant Oceanside
7 Transmission and/or Defendant Dalenzie and/or Defendant Southern California Holdings in
8 California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time
9 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
10 date as determined by the Court (the “CLASS PERIOD”).

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

17 52. The members of the class are so numerous that joinder of all class members is
18 impractical.

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

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

54. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANT's conduct and actions alleged herein.

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

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

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

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

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

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

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

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

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

4 **FIRST CAUSE OF ACTION**

5 **Unlawful Business Practices**

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

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

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

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

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

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

24 66. By the conduct alleged herein, DEFENDANT has engaged and continues to
25 engage in a business practice which violates California law, including but not limited to, the
26 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
27 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
28 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

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

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

3 **SECOND CAUSE OF ACTION**

4 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

26 84. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
28

1 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
2 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

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

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

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

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

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

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

18 **THIRD CAUSE OF ACTION**

19 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

114. 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.

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

6 **SIXTH CAUSE OF ACTION**

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

8 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

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

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

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

10 **SEVENTH CAUSE OF ACTION**

11 **Failure To Provide Accurate Itemized Statements**

12 **(Cal. Lab. Code § 226)**

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

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

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

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

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

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

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

124. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period

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

EIGHTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code § 203)

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

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

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

As used in this article:

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

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

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

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

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

130. Cal. Lab. Code § 203 provides:

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

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

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

12 **PRAYER FOR RELIEF**

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

15 1. On behalf of the CALIFORNIA CLASS:

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

26 2. On behalf of the CALIFORNIA CLASS:

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

1 to Cal. Code of Civ. Proc. § 382;

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

18 3. On all claims:

- 19 a. An award of interest, including prejudgment interest at the legal rate;
- 20 b. Such other and further relief as the Court deems just and equitable; and
- 21 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
22 including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.
- 23

24 DATED: July 7, 2022

ZAKAY LAW GROUP, APLC

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

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DEMAND FOR A JURY TRIAL

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

DATED: July 7, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Dalenzie, Inc.
c/o Dean Kuhn
3854 Blue Bird Canyon Ct
Vista, CA 92084



9590 9402 7420 2055 3643 94

2. Article Number (Transfer from service label)

7021 2720 0000 9972 7324

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

Roth 002-346

3. Service Type

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

1 Mail
1 Mail Restricted Delivery
500)

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Oceanside Transmission, Inc.
c/o Dean Kuhn
229 S. Coast Hwy
Oceanside, CA 92054



9590 9402 7420 2055 3644 00

2. Article Number (Transfer from service label)

7021 2720 0000 9972 7317

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

Roth 002-346

3. Service Type

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

1 Mail
1 Mail Restricted Delivery
50)

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Southwest California Holdings, Inc.

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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