

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

HOPE OF THE VALLEY RESCUE MISSION, a California Nonprofit Corporation; and DOES 1-50, Inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

OSCAR ALMANZA, an individual, on behalf of himself and on behalf of all persons similarly situated

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es):
Spring Street Courthouse
312 North Spring Street
Los Angeles CA 90012

CASE NUMBER: 22STCV17591
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay SBN: 277924 Tel: (619) 255-9047 Fax: (619) 599-8291
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 05/27/2022
(Fecha)

Clerk, by Sherri R. Carter Executive Officer / Clerk of Court, Deputy
(Secretario) J. Covarrubias (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

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SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF LOS ANGELES**

OSCAR ALMANZA, an individual, on behalf
 of himself and on behalf of all persons similarly
 situated,

Plaintiff,

v.

HOPE OF THE VALLEY RESCUE MISSION,
 a California Nonprofit Corporation; and DOES
 1-50, Inclusive,

Defendants.

Case No: **22STCV17591**

CLASS ACTION COMPLAINT FOR:

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

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

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant HOPE OF THE VALLEY RESCUE MISSION (“DEFENDANT”) is a California Nonprofit Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Los Angeles.

2. DEFENDANT is a nonprofit corporation that owns, operates and manages homeless shelters in the State of California, including in the County of Los Angeles where Plaintiff worked.

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

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

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

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

20 7. PLAINTIFF was employed by DEFENDANT in California from November 2020
21 to November of 2021 as a non-exempt employee, paid on an hourly basis, and entitled to the
22 legally required meal and rest periods and payment of minimum and overtime wages due for all
23 time worked.

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

1 9. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
3 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
4 lawfully compensate these employees.

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

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

13 **JURISDICTION AND VENUE**

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

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

23 **THE CONDUCT**

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

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

11 **A. Meal Period Violations**

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

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

15 **B. Rest Period Violations**

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

1 were from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS'
2 managers.

3 **C. Unreimbursed Business Expenses**

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

15 19. In the course of their employment, DEFENDANTS required PLAINTIFF and
16 other CALIFORNIA CLASS Members to use their personal cell phones to perform work-related
17 tasks, correspond and coordinate tasks with their supervisors and/or other employees as a result
18 of and in furtherance of their job duties as employees for DEFENDANT. But for the use of their
19 own personal cell phones, PLAINTIFF and the CALIFORNIA CLASS Members could not
20 complete their essential job duties, including but not limited to performing work-related tasks and
21 sending and receiving work-related communications from DEFENDANTS. However,
22 DEFENDANTS unlawfully failed to sufficiently reimburse PLAINTIFF and other
23 CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in the
24 course of their employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA
25 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related
26 to the use of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

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1 **D. Wage Statement Violations**

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

10 21. From time to time during the CLASS PERIOD, when PLAINTIFF and other
11 CALIFORNIA CLASS Members missed meal and rest breaks, or were not paid for all hours
12 worked, DEFENDANTS failed to provide PLAINTIFF and other CALIFORNIA CLASS
13 Members with complete and accurate wage statements that include, among other things, the
14 correct amount of total hours worked, all applicable hourly rates in effect during the pay period,
15 and the corresponding amount of time worked at each hourly rate. Further, from time to time,
16 DEFENDANT included hours for sick pay into the calculation for total hours worked,
17 notwithstanding the fact that hours for sick pay are not considered hours worked for purposes of
18 Cal. Lab. Code § 226(a)(2). Thus, DEFENDANT from time to time issued itemized wage
19 statements that violated Cal. Lab. Code § 226(a)(2).

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

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

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

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

25. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and other members of the CALIFORNIA CLASS to perform work pre-shift, post-shift, and during a scheduled meal break while off-the-clock. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS having to work while off-the-clock.

26. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for all the work they performed, including pre-shift, post-shift, and during meal periods while off-the-clock work.

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

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

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

1 32. 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 spent performing work before and after shifts, receiving and responding to work-
4 related communications on personal cell phones outside of their scheduled shifts and working
5 while clocked out for meal periods. Further, DEFENDANTS would require that PLAINTIFF
6 clock-out and continue performing work-related tasks, including but not limited to, taking out the
7 trash. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members of
8 the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is
9 evidenced by DEFENDANTS' business records.

10 **F. Regular Rate Violation- Overtime, Double Time, Meal and Rest Period Premiums, and**
11 **Sick Pay**

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

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

25 35. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
26 members' compensation was DEFENDANTS' non-discretionary incentive program that paid
27 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
28 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 36. 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 paid sick pay, and earned non-
6 discretionary compensation, DEFENDANTS failed to accurately include the non-discretionary
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. As a matter of law, the compensation received
9 by PLAINTIFF and other CALIFORNIA CLASS members must be included in the "regular rate
10 of pay." The failure to do so has resulted in a systematic underpayment of overtime and double
11 time compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other
12 CALIFORNIA CLASS members by DEFENDANTS. Specifically, California Labor Code
13 Section 246 mandates that paid sick time for non-employees shall be calculated in the same
14 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid
15 sick time, whether or not the employee actually works overtime in that workweek.
16 DEFENDANTS' conduct, as articulated herein, by failing to include the incentive compensation
17 as part of the "regular rate of pay" for purposes of overtime, double time, paid meal and rest period
18 premium payments, and/or paid sick pay compensation was in violation of Cal. Lab. Code § 246
19 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or
20 204.

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

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

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

5 38. 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 Rounding Violations**

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

24 40. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
25 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
26 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
27 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
28 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an

1 off-duty meal break. Additionally, DEFENDANTS' unlawful rounding policy and practice
2 caused PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by
3 DEFENDANTS for more than ten (10) hours during a shift without receiving a second off-duty
4 meal break.

5 **I. Unlawful Deductions**

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

10 **J. Failure to Provide Personnel Files**

11 42. Subsequent to PLAINTIFF'S termination, on December 27, 2021 and January 28,
12 2022, PLAINTIFF caused written requests via certified mail to be delivered to DEFENDANTS
13 for PLAINTIFF'S personnel and employment records, including but not limited to (1) payroll
14 records; (2) employment contracts; (3) itemized pay stubs; and (4) PLAINTIFF'S complete
15 employment file.

16 43. DEFENDANTS failed to provide and/or make available to PLAINTIFF his
17 personnel records, payroll records, employment contracts, and entire employment file within (30)
18 days of all her requests stated above. In fact, as of the date of filing of this complaint,
19 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
20 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide
21 PLAINTIFF with his employment file. Section 1198.5 states that employees (and former
22 employees) have the right to inspect personnel records maintained by the employer "related to the
23 employee's performance or to any grievance concerning the employee." Employers must allow
24 inspection or copying within thirty (30) days of the request. PLAINTIFF requested his
25 employment file via certified mail and DEFENDANTS failed to respond. As a result, PLAINTIFF
26 is now entitled to and requests injunctive relief to obtain compliance with Cal. Lab. Code Section
27 1198.5, a statutory penalty, and an award of attorneys' fees and costs for bringing this action.
28

1 44. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
2 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
3 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
4 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
5 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
6 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
7 with a rest break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for
8 the rest break. DEFENDANTS' policy caused PLAINTIFF to remain on-call, on-duty and/or on-
9 premises during what was supposed to be his off-duty meal periods. PLAINTIFF therefore
10 forfeited meal and rest breaks without additional compensation and in accordance with
11 DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided
12 PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code § 226. Further,
13 DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to
14 the use of his personal cell phone and personal expenses incurred for uniform maintenance, on
15 behalf of and in furtherance of his employment with DEFENDANTS. Further, failed to provide
16 and/or make available to PLAINTIFF his personnel records, payroll records, employment
17 contracts, and entire employment file within (30) days of all her requests on December 27, 2021
18 and January 28, 2022. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum,
19 overtime and double time compensation still owed to him or any penalty wages owed to him under
20 Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed
21 the sum or value of \$75,000.

22 **K. CLASS ACTION ALLEGATIONS**

23 45. PLAINTIFF brings the First through Eighth Causes of Action as a class action
24 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
25 previously were employed by Defendant in California and classified as non-exempt employees
26 ("CALIFORNIA CLASS") during the period beginning four years prior to the filing of the
27 Complaint and ending on a date determined by the Court ("CLASS PERIOD").
28

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

8 47. The members of the class are so numerous that joinder of all class members is
9 impractical.

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

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

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

13 49. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as

14 a result of DEFENDANTS' conduct and actions alleged herein.

15 50. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has

16 the same interests as the other members of the class.

17 51. PLAINTIFF will fairly and adequately represent and protect the interests of the

18 CALIFORNIA CLASS Members.

19 52. PLAINTIFF retained able class counsel with extensive experience in class action

20 litigation.

21 53. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the

22 interests of the other CALIFORNIA CLASS Members.

23 54. There is a strong community of interest among PLAINTIFF and the members of

24 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are

25 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries

26 sustained.

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

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

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

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

FIRST CAUSE OF ACTION

Unlawful Business Practices

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

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

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

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

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

12 61. By the conduct alleged herein, DEFENDANT has engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
15 including Sections 201, 202, 203, 204, 221, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
16 1198, 2802, for which this Court should issue declaratory and other equitable relief pursuant to
17 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
18 constitute unfair competition, including restitution of wages wrongfully withheld.

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

24 63. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
25 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
26 mandated meal and rest periods and the required amount of compensation for missed meal and
27 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
28 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.

1 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
2 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

3 64. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
4 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANT.

7 65. By the conduct alleged herein, DEFENDANT's practices were also unfair and
8 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
9 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
10 as required by Cal. Lab. Code §§ 226.7 and 512.

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

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

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

25 69. All the acts described herein as violations of, among other things, the Industrial
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
27 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
28

1 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
2 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

19 **SECOND CAUSE OF ACTION**

20 **Failure To Pay Minimum Wages**

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

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

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

26 74. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
27 for DEFENDANT'S willful and intentional violations of the California Labor Code and the
28

1 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate
2 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

3 75. 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 76. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
7 the minimum so fixed is unlawful.

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

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

15 79. 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 denied accurate compensation to PLAINTIFF
18 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

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

25 81. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
26 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
27 minimum wage compensation for their time worked for DEFENDANT.
28

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

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

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

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

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

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

7 **THIRD CAUSE OF ACTION**

8 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

17 95. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
18 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
19 compensation for overtime worked.

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

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

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

10 99. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
11 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all
12 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
13 CLASS have suffered and will continue to suffer an economic injury in amounts which are
14 presently unknown to them, and which will be ascertained according to proof at trial.

15 100. DEFENDANTS knew or should have known that PLAINTIFF and the other
16 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
17 DEFENDANT systematically elected, either through intentional malfeasance or gross
18 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
19 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
20 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

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

FOURTH CAUSE OF ACTION

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

103. 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.

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

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

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

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

14 **FIFTH CAUSE OF ACTION**

15 **Failure To Provide Required Rest Periods**

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

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

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

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

1 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
2 DEFENDANT and DEFENDANT's managers. As a result, DEFENDANT's failure to provide
3 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
4 periods is evidenced by DEFENDANT's business records.

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

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

13 **SIXTH CAUSE OF ACTION**

14 **Failure To Provide Accurate Itemized Statements**

15 **(Cal. Lab. Code §§ 226)**

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

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

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

- 22 a. Gross wages earned,
- 23 b. (2) total hours worked by the employee, except for any employee whose
24 compensation is solely based on a salary and who is exempt from payment
25 of overtime under subdivision (a) of Section 515 or any applicable order of
26 the Industrial Welfare Commission,
- 27 c. the number of piece-rate units earned and any applicable piece rate if the employee
28 is paid on a piece-rate basis,

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

113. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, 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. Further, from time to time, DEFENDANT included hours for sick pay into the calculation for total hours worked, notwithstanding the fact that hours for sick pay are not considered hours worked for purposes of Cal. Lab. Code § 226(a)(2). Thus, DEFENDANT from time to time issued itemized wage statements that violated Cal. Lab. Code § 226(a)(2).

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

115. 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

1 wages for all missed meal and rest breaks and the amount of employment taxes which were not
2 properly paid to state and federal tax authorities. These damages are difficult to estimate.
3 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
4 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
5 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
6 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
7 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
8 of the CALIFORNIA CLASS herein).

9 **SEVENTH CAUSE OF ACTION**

10 **Failure To Pay Wages When Due**

11 **(Cal. Lab. Code §§ 203)**

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

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

16 117. Cal. Lab. Code § 200 provides that:

17 As used in this article:

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

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

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

28 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.

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

121. Cal. Lab. Code § 203 provides:

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

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

123. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA CLASS whose employment has terminated, 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.

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees For Required Expenses

(Cal. Lab. Code §§ 2802)

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

124. 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.

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

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

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

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

NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§2698 et seq.)

(Alleged by PLAINTIFF against all Defendants)

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

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

10 130. PLAINTIFF, and such persons that may be added from time to time who satisfy
11 the requirements and exhaust the administrative procedures under the Private Attorney General
12 Act, bring this Representative Action on behalf of the State of California with respect to himself
13 and all non-exempt and exempt employees who worked for Defendant in California during the
14 time period of March 22, 2021 until the present (the "AGGRIEVED EMPLOYEES").

15 131. On March 22, 2022, PLAINTIFF gave written notice by certified mail to the Labor
16 and Workforce Development Agency (the "Agency") and the employer of the specific
17 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
18 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
19 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
20 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
21 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
22 EMPLOYEES as herein defined.

23 132. The policies, acts and practices heretofore described were and are an unlawful
24 business act or practice because DEFENDANTS, (a) failed to properly record and pay
25 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked,
26 including minimum wage and overtime and overtime compensation, (b) failed to provide accurate
27 itemized wage statements, (c) failed to provide meal breaks and rest breaks in accordance with
28 California law, (d) failed to pay meal and rest break premiums at the correct rate, and (e) failed

1 to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor Code
2 §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6,
3 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14,
4 1198, 1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and thereby gives rise
5 to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil
6 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
7 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
8 the other AGGRIEVED EMPLOYEES.

9 **PRAYER FOR RELIEF**

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

12 1. On behalf of the CALIFORNIA CLASS:

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

23 2. On behalf of the CALIFORNIA CLASS:

- 24 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth,
25 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
26 to Cal. Code of Civ. Proc. § 382;
27 b. Compensatory damages, according to proof at trial, including compensatory
28 damages for minimum wage, overtime compensation and separately owed rest

- 1 periods, due to PLAINTIFF and the other members of the CALIFORNIA CLASS,
2 during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- 3 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
4 the applicable IWC Wage Order;
- 5 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
6 which a violation occurs and one hundred dollars (\$100) per each member of the
7 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
8 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
9 violation of Cal. Lab. Code § 226
- 10 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
11 penalty from the due date thereof at the same rate until paid or until an action
12 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 13 3. On behalf of the State of California and with respect to all AGGRIEVED
14 EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private
15 Attorneys General Act of 2004;
- 16 4. On all claims:
- 17 a. An award of interest, including prejudgment interest at the legal rate;
18 b. Such other and further relief as the Court deems just and equitable; and
19 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
20

21 DATED: May 27, 2022

22 **ZAKAY LAW GROUP, APLC**

23
24 By: 
25 Shani O. Zakay
26 Attorney for PLAINTIFF
27
28

DEMAND FOR A JURY TRIAL

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

DATED: May 27, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1



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March 22, 2022

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

HOPE OF THE VALLEY RESCUE MISSION

c/o KENNETH RICHARD KRAFT
16047 Tupper Street
North Hills, CA 91343

Sent via Certified Mail and Return Receipt No. 7021 1970 0001 4068 3544

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

Dear Sir/Madam:

Our offices represent Plaintiff OSCAR ALMANZA (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant HOPE OF THE VALLEY RESCUE MISSION (“Defendant”). Plaintiff was employed by Defendant in California from November of 2020 to November of 2021 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

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

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

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

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

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues 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 Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Very truly yours,
JCL LAW FIRM, APC

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

Jean-Claude Lapuyade, Esq.

Enclosure (1)

ZAKAY LAW GROUP, APLC

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Attorneys for Plaintiff OSCAR ALMANZA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

OSCAR ALMANZA, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

HOPE OF THE VALLEY RESCUE MISSION,
a California Nonprofit 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 PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN

DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203; and,
8) FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF
CALIFORNIA LABOR CODE §2802.

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant HOPE OF THE VALLEY RESCUE MISSION ("DEFENDANT") is a California Nonprofit Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Los Angeles.

2. DEFENDANT is a nonprofit corporation that owns, operates and manages homeless shelters in the State of California, including in the County of Los Angeles where Plaintiff worked.

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

4. The agents, servants, and/or employees of the Defendants and each of them acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.

1 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
2 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
3 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
4 Defendants' agents, servants and/or employees.

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

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

16 7. PLAINTIFF was employed by DEFENDANT in California from November 2020
17 to November of 2021 as a non-exempt employee, paid on an hourly basis, and entitled to the
18 legally required meal and rest periods and payment of minimum and overtime wages due for all
19 time worked.

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

26 9. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
27 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
28 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
lawfully compensate these employees.

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

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

9 **JURISDICTION AND VENUE**

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

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

19 **THE CONDUCT**

20 14. In violation of the applicable sections of the California Labor Code and the
21 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
22 matter of company policy, practice and procedure, intentionally, knowingly and systematically
23 failed to provide legally compliant meal and rest periods, failed to accurately compensate
24 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
25 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
26 time worked, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for
27 business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA
28 CLASS with accurate itemized wage statements showing, among other things, the correct number
total hours worked and all applicable hourly rates in effect during the pay periods and the

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

7 **A. Meal Period Violations**

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

24 16. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
25 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
26 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
27 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
28 other CALIFORNIA CLASS Members were required from time to time to perform work as

ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these employees were required by DEFENDANTS to work ten (10) hours of work from time to time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for limited and narrowly construed “on-duty” meal period exception. PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS’ strict corporate policy and practice.

B. Rest Period Violations

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

C. Unreimbursed Business Expenses

18. DEFENDANTS as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF

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

10 19. In the course of their employment, DEFENDANTS required PLAINTIFF and
11 other CALIFORNIA CLASS Members to use their personal cell phones to perform work-related
12 tasks, correspond and coordinate tasks with their supervisors and/or other employees as a result
13 of and in furtherance of their job duties as employees for DEFENDANT. But for the use of their
14 own personal cell phones, PLAINTIFF and the CALIFORNIA CLASS Members could not
15 complete their essential job duties, including but not limited to performing work-related tasks and
16 sending and receiving work-related communications from DEFENDANTS. However,
17 DEFENDANTS unlawfully failed to sufficiently reimburse PLAINTIFF and other
18 CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in the
19 course of their employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA
20 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related
21 to the use of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

22 **D. Wage Statement Violations**

23 20. California Labor Code Section 226 requires an employer to furnish its employees
24 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
25 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
26 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
27 of the employee and only the last four digits of the employee's social security number or an
28 employee identification number other than a social security number, (8) the name and address of

1 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate by the employee.

3 21. From time to time during the CLASS PERIOD, when PLAINTIFF and other
4 CALIFORNIA CLASS Members missed meal and rest breaks, or were not paid for all hours
5 worked, DEFENDANTS failed to provide PLAINTIFF and other CALIFORNIA CLASS
6 Members with complete and accurate wage statements that include, among other things, the
7 correct amount of total hours worked, all applicable hourly rates in effect during the pay period,
8 and the corresponding amount of time worked at each hourly rate. Further, from time to time,
9 DEFENDANT included hours for sick pay into the calculation for total hours worked,
10 notwithstanding the fact that hours for sick pay are not considered hours worked for purposes of
11 Cal. Lab. Code § 226(a)(2). Thus, DEFENDANT from time to time issued itemized wage
12 statements that violated Cal. Lab. Code § 226(a)(2).

13 22. In addition to the violations described above, DEFENDANTS, from time to time,
14 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
15 that comply with Cal. Lab. Code § 226.

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

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

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

24 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required
25 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work pre-shift, post-
26 shift, and during a scheduled meal break while off-the-clock. This resulted in PLAINTIFF and
27 other members of the CALIFORNIA CLASS having to work while off-the-clock.

1 26. DEFENDANTS directed and directly benefited from the uncompensated off-the-
2 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

6 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
7 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
8 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
9 wages earned and owed for all the work they performed, including pre-shift, post-shift, and during
10 meal periods while off-the-clock work.

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

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

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

20 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
21 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
22 for the time spent performing work before and after shifts, receiving and responding to work-
23 related communications on personal cell phones outside of their scheduled shifts and working
24 while clocked out for meal periods. Further, DEFENDANTS would require that PLAINTIFF
25 clock-out and continue performing work-related tasks, including but not limited to, taking out the
26 trash. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members of
27 the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is
28 evidenced by DEFENDANTS' business records.

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

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

34. 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.

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

36. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-discretionary compensation, DEFENDANTS failed to accurately include the non-discretionary compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. As a matter of law, the compensation received by PLAINTIFF and other CALIFORNIA CLASS members must be included in the "regular rate

1 of pay.” The failure to do so has resulted in a systematic underpayment of overtime and double
2 time compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other
3 CALIFORNIA CLASS members by DEFENDANTS. Specifically, California Labor Code
4 Section 246 mandates that paid sick time for non-employees shall be calculated in the same
5 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid
6 sick time, whether or not the employee actually works overtime in that workweek.
7 DEFENDANTS’ conduct, as articulated herein, by failing to include the incentive compensation
8 as part of the “regular rate of pay” for purposes of overtime, double time, paid meal and rest period
9 premium payments, and/or paid sick pay compensation was in violation of Cal. Lab. Code § 246
10 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or
11 204.

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

23 **G. Violation for Untimely Payment of Wages**

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

1 **H. Unlawful Rounding Violations**

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

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

24 **I. Unlawful Deductions**

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

1 **J. Failure to Provide Personnel Files**

2 42. Subsequent to PLAINTIFF’S termination, on December 27, 2021 and January 28,
3 2022, PLAINTIFF caused written requests via certified mail to be delivered to DEFENDANTS
4 for PLAINTIFF’S personnel and employment records, including but not limited to (1) payroll
5 records; (2) employment contracts; (3) itemized pay stubs; and (4) PLAINTIFF’S complete
6 employment file.

7 43. DEFENDANTS failed to provide and/or make available to PLAINTIFF his
8 personnel records, payroll records, employment contracts, and entire employment file within (30)
9 days of all her requests stated above. In fact, as of the date of filing of this complaint,
10 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
11 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide
12 PLAINTIFF with his employment file. Section 1198.5 states that employees (and former
13 employees) have the right to inspect personnel records maintained by the employer “related to the
14 employee’s performance or to any grievance concerning the employee.” Employers must allow
15 inspection or copying within thirty (30) days of the request. PLAINTIFF requested his
16 employment file via certified mail and DEFENDANTS failed to respond. As a result, PLAINTIFF
17 is now entitled to and requests injunctive relief to obtain compliance with Cal. Lab. Code Section
18 1198.5, a statutory penalty, and an award of attorneys’ fees and costs for bringing this action.

19 44. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
20 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
21 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
22 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
23 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
24 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
25 with a rest break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for
26 the rest break. DEFENDANTS’ policy caused PLAINTIFF to remain on-call, on-duty and/or on-
27 premises during what was supposed to be his off-duty meal periods. PLAINTIFF therefore
28 forfeited meal and rest breaks without additional compensation and in accordance with

1 DEFENDANTS’ strict corporate policy and practice. Moreover, DEFENDANTS also provided
2 PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code § 226. Further,
3 DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to
4 the use of his personal cell phone and personal expenses incurred for uniform maintenance, on
5 behalf of and in furtherance of his employment with DEFENDANTS. Further, failed to provide
6 and/or make available to PLAINTIFF his personnel records, payroll records, employment
7 contracts, and entire employment file within (30) days of all her requests on December 27, 2021
8 and January 28, 2022. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum,
9 overtime and double time compensation still owed to him or any penalty wages owed to him under
10 Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does not exceed
11 the sum or value of \$75,000.

12 **K. CLASS ACTION ALLEGATIONS**

13 45. PLAINTIFF brings the First through Eighth Causes of Action as a class action
14 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
15 previously were employed by Defendant in California and classified as non-exempt employees
16 (“CALIFORNIA CLASS”) during the period beginning four years prior to the filing of the
17 Complaint and ending on a date determined by the Court (“CLASS PERIOD”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 **FIRST CAUSE OF ACTION**

12 **Unlawful Business Practices**

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

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

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

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

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

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

1 61. By the conduct alleged herein, DEFENDANT has engaged and continues to
2 engage in a business practice which violates California law, including but not limited to, the
3 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
4 including Sections 201, 202, 203, 204, 221, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
5 1198, 2802, for which this Court should issue declaratory and other equitable relief pursuant to
6 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
7 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

28

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

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

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

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

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

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

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

8 **SECOND CAUSE OF ACTION**

9 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **THIRD CAUSE OF ACTION**

23 **Failure To Pay Overtime Compensation**

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

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

26 87. 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 88. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
2 for DEFENDANT's willful and intentional violations of the California Labor Code and the
3 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
4 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
5 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 **FOURTH CAUSE OF ACTION**

2 **Failure To Provide Required Meal Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

22 105. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
23 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
24 who were not provided a meal period, in accordance with the applicable Wage Order, one
25 additional hour of compensation at each employee's regular rate of pay for each workday that a
26 meal period was not provided.
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106. 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)

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

108. 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. 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.

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

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

SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code §§ 226)

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

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

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

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

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

113. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, 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. Further, from time to time, DEFENDANT included hours for sick pay into the calculation for total hours worked, notwithstanding the fact that hours for sick pay are not considered hours worked for purposes of Cal. Lab. Code § 226(a)(2). Thus, DEFENDANT from time to time issued itemized wage statements that violated Cal. Lab. Code § 226(a)(2).

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

115. 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).

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

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

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

8 117. Cal. Lab. Code § 200 provides that:

9 As used in this article:

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

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

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

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

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

121. Cal. Lab. Code § 203 provides:

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

1 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
2 their personal cellular phones for DEFENDANTS within the course and scope of their
3 employment for DEFENDANTS. These expenses were necessary to complete their principal job
4 duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their
5 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
6 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
7 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer
8 is required to do under the laws and regulations of California.

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

13 **PRAYER FOR RELIEF**

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

16 1. On behalf of the CALIFORNIA CLASS:

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

27 2. On behalf of the CALIFORNIA CLASS:

- 28 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth,

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 minimum wage, 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 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: March 22, 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: March 22, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

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