

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Dr., Ste 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com

Attorneys for Plaintiff MANUEL FIMBRES

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

04/25/2022 at 02:10:00 PM

Clerk of the Superior Court
By Keira McCray, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MANUEL FIMBRES, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

DREAMSTYLE REMODELING OF
CALIFORNIA, LLC, a Delaware limited
liability company; DREAMSTYLE
REMODELING OF CALIFORNIA, INC., a
California corporation; DREAMSTYLE
REMODELING, INC., a New Mexico
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: 37-2022-00013690-CU-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §17200 *et*
seq;
- 2) FAILURE TO PAY MINIMUM WAGES
IN VIOLATION OF CAL. LAB. CODE §§
1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§
510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED
REST PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE § 226;

- 1 7) FAILURE TO PROVIDE WAGES WHEN
2 DUE IN VIOLATION OF CAL. LAB.
3 CODE §§ 201, 202 AND 203; and
4 8) FAILURE TO REIMBURSE
5 EMPLOYEES FOR REQUIRED
6 EXPENSES IN VIOLATION OF CAL.
7 LAB. CODE § 2802;
8 9) VIOLATIONS OF THE PRIVATE
9 ATTORNEY GENERAL ACT AT LABOR
10 CODE SECTIONS 2698 *ET SEQ.*

11 **DEMAND FOR A JURY TRIAL**

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

15 **THE PARTIES**

16 1. Defendant DREAMSTYLE REMODELING OF CALIFORNIA, LLC
17 (“Defendant Dreamstyle LLC”) is a Delaware corporation that at all relevant times mentioned
18 herein conducted and continues to conduct substantial and regular business in the state of
19 California

20 2. Defendant DREAMSTYLE REMODELING OF CALIFORNIA, INC.
21 (“Defendant Dreamstyle Inc.”) is a California corporation that at all relevant times mentioned
22 herein conducted and continues to conduct substantial and regular business in the state of
23 California.

24 3. Defendant DREAMSTYLE REMODELING, INC. (“Defendant Dreamstyle
25 Remodeling”) is a New Mexico corporation that at all relevant times mentioned herein conducted
26 and continues to conduct substantial and regular business in the state of California.

27 4. Defendant Dreamstyle LLC, Defendant Dreamstyle Inc., and Defendant
28 Dreamstyle Remodeling were the joint employers of PLAINTIFF as evidenced by the contracts
signed and by the company the PLAINTIFF performed work for respectively, and are therefore
jointly responsible as employers for the conduct alleged herein and collectively referred to herein
as “DEFENDANTS” and/or “DEFENDANT.”

1 5. DEFENDANTS provide home remodeling services in the State of California,
2 including San Diego County, where PLAINTIFF worked.

3 6. PLAINTIFF was employed by DEFENDANTS in California from April of 2014
4 to January of 2022 as an installer, and was at all times classified by DEFENDANTS as a non-
5 exempt employee, paid on a piece-rate basis, and entitled to the legally required meal and rest
6 periods and payment of minimum and overtime wages due for all time worked. PLAINTIFF was
7 paid by piece-rate only while he was performing installation jobs for DEFENDANTS in
8 accordance with DEFENDANTS' compensation package. Importantly, PLAINTIFF was not
9 provided with minimum wages for his non-production work time. PLAINTIFF also did not
10 receive paid rest breaks as required by California law. DEFENDANTS failed to pay PLAINTIFF
11 the correct amount of compensation because DEFENDANTS established an illegal pay practice
12 of paying PLAINTIFF on a piece rate basis when conducting installation jobs assigned by
13 DEFENDANTS. DEFENDANTS however failed to pay minimum wages for compensable time
14 worked, including time spent traveling between jobs, and time spent preparing for jobs by
15 purchasing and gathering the required materials for each job. DEFENDANTS also failed to pay
16 PLAINTIFF any overtime wages for all overtime worked, thereby uniformly resulting in
17 PLAINTIFF being underpaid for all time worked during his employment, including overtime
18 worked. To date, DEFENDANTS have not fully and timely paid the PLAINTIFF for all his wages
19 still owed to him or any penalty wages owed to him under California Labor Code § 203.

20 7. 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 Dreamstyle LLC and/or
22 Defendant Dreamstyle Inc. and/or Defendant Dreamstyle Remodeling in California who were
23 classified as non-exempt employees, including those who were paid in whole or in part on a piece
24 rate basis (the "CALIFORNIA CLASS") at any time during the period beginning four years from
25 the date of filing of the original Complaint and ending on the date as determined by the Court (the
26 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of the
27 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

1 8. 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 CALIFORNIA CLASS PERIOD caused by DEFENDANTS' uniform policy and practice
4 which failed to lawfully compensate these employees. DEFENDANTS' uniform policy and
5 practice alleged herein was an unlawful, unfair, and deceptive business practice whereby
6 DEFENDANTS retained and continue to retain wages due PLAINTIFF and the other members
7 of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS
8 seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
9 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
10 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and
11 equitable relief.

12 9. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
14 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
15 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this First Amended
16 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
17 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
18 alleges, that the Defendants named in this First Amended Complaint, including DOES 1 through
19 50, inclusive, are responsible in some manner for one or more of the events and happenings that
20 proximately caused the injuries and damages hereinafter alleged

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

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS' control. Importantly, PLAINTIFF was not provided with minimum wages for all of his non-installation work time when DEFENDANTS only paid PLAINTIFF and other CALIFORNIA CLASS Members a flat piece rate per job, regardless of how many hours were worked, and regardless of how much time was spent working before or after each job. PLAINTIFF also did not receive compliant meal breaks as required by California law when being paid a piece rate by DEFENDANT. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates, or separate compensation for rest breaks. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business records.

A. Meal Break Violations

12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. Specifically, as a result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing, DEFENDANT required PLAINTIFF to work during what was supposed to be PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited

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

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

25 **B. Rest Break Violations**

26 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
27 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
28 being provided ten (10) minute rest periods. Further, these employees were denied their first rest

1 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
2 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked
3 of between six (6) and eight (8) hours from time to time, and a first, second and third rest period
4 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
5 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
6 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
7 CALIFORNIA CLASS Members were from time to time denied their proper rest periods by
8 DEFENDANTS and DEFENDANTS' managers. Additionally, PLAINTIFF and CALIFORNIA
9 CLASS Members were required to carry cordless communication devices in order to receive and
10 respond to work-related communications during their off-duty rest periods. When they were
11 provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were, from
12 time to time, required to remain on duty, on call and/or on premises.

13 15. In addition, because of DEFENDANTS' pay plan for PLAINTIFF and
14 CALIFORNIA CLASS Members (being paid a flat rate per-job only), DEFENDANTS failed to
15 compensate PLAINTIFF and CALIFORNIA CLASS Members for their rest periods as required
16 by the applicable Wage Order and Labor Code. DEFENDANTS did not have a policy or practice
17 which paid for off-duty rest periods to PLAINTIFF and the other CALIFORNIA CLASS
18 Members when they were paid piece rate pay only. As a result, DEFENDANTS' failure to provide
19 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
20 periods is evidenced by DEFENDANTS' business records.

21 **C. Wage Statement Violations**

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

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 17. When PLAINTIFF and other CALIFORNIA CLASS Members were from time to
4 time required to miss meal and rest breaks, and/or were not paid all minimum and overtime wages
5 owed to them, DEFENDANTS also failed to provide PLAINTIFF and the other members of the
6 CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among
7 other things, the correct wages paid, including the wages paid for missed meal and rest breaks.
8 Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees
9 with an accurate itemized wage statement in writing showing, among other things, gross wages
10 earned and all applicable hourly rates in effect during the pay period and the corresponding
11 amount of time worked at each hourly rate. Aside from the violations listed above in this
12 paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists
13 all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANTS from
14 time to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
15 wage statements which violated Cal. Lab. Code § 226.

16 **D. Unreimbursed Business Expenses**

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

1 19. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
2 Members as a business expense, were required by DEFENDANTS to use their own personal
3 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
4 employees for DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for
5 the costs associated with the use of their personal cellular phones and personal vehicles for
6 DEFENDANTS' benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members
7 were required by DEFENDANTS to use their personal cell phones and personal vehicles to
8 conduct work related business. As a result, in the course of their employment with DEFENDANT
9 the PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed
10 business expenses which included, but were not limited to, costs related to the use of their personal
11 cellular phones and personal vehicles all on behalf of and for the benefit of DEFENDANTS.

12 **E. Minimum Wage and Overtime Violations**

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

25 **F. Unfair Competition Violations**

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

1 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for
2 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to
3 purposefully avoid the payment for all time worked as required by California law which allows
4 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
5 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
6 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

7 22. By reason of this uniform conduct applicable to PLAINTIFF and the other
8 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
9 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
10 "UCL"), by engaging in a uniform company-wide policy, practice, and procedure which failed to
11 accurately calculate and record all missed meal and rest periods by PLAINTIFF and other
12 CALIFORNIA CLASS Members. The proper recording of these employees' missed meal and rest
13 breaks is the DEFENDANTS' burden. As a result of DEFENDANTS' intentional disregard of the
14 obligation to meet this burden, DEFENDANTS failed to properly calculate and/or pay all required
15 compensation for work performed by the members of the CALIFORNIA CLASS and violated the
16 California Labor Code and regulations promulgated thereunder as herein alleged.

17 23. Specifically, as to PLAINTIFF, DEFENDANTS failed to provide all the legally
18 required off-duty meal and rest breaks to him as required by the applicable Wage Order and Labor
19 Code and failed to pay him all minimum and overtime wages due to him. DEFENDANTS did not
20 have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF,
21 and also failed to compensate PLAINTIFF for his missed meal and rest breaks. The nature of the
22 work performed by the PLAINTIFF did not prevent him from being relieved of all of his duties
23 for the legally required off-duty meal periods. As a result, DEFENDANTS' failure to provide
24 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANTS' business
25 records. As a result of DEFENDANTS not accurately recording all missed meal and rest periods
26 and/or the correct overtime rate, and/or separately compensated rest breaks, the wage statements
27 issued to PLAINTIFF by DEFENDANTS violated California law, and in particular, Labor Code
28 Section 226(a). To date, DEFENDANTS have yet to pay PLAINTIFF all of his overtime wages

1 due to him and DEFENDANTS has failed to pay any penalty wages owed to him under California
2 Labor Code Section 203 and/or 204. The amount in controversy for PLAINTIFF individually
3 does not exceed the sum or value of \$75,000.

4 **JURISDICTION AND VENUE**

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

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

14 **THE CALIFORNIA CLASS**

15 26. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
16 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
17 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
18 persons who are or previously were employed by Defendant Dreamstyle LLC and/or Defendant
19 Dreamstyle Inc. and/or Defendant Dreamstyle Remodeling in California who were classified as
20 non-exempt employees, including those who were paid in whole or in part on a piece rate basis
21 (the "CALIFORNIA CLASS") at any time during the period beginning four years from the date
22 of the filing of the original Complaint and ending on the date as determined by the Court (the
23 "CALIFORNIA CLASS PERIOD") The amount in controversy for the aggregate claim of the
24 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

25 27. To the extent equitable tolling operates to toll claims by the CALIFORNIA
26 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
27 accordingly.
28

1 28. DEFENDANTS, as a matter of company policy, practice, and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and
4 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all meal
5 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
6 DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and
7 permits or suffers to permit this work.

8 29. DEFENDANTS have the legal burden to establish that each and every
9 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
10 required by California laws. DEFENDANTS, however, as a matter of uniform and systematic
11 policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still
12 fail to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
13 Member is paid as required by law. This common business practice is applicable to each and every
14 CALIFORNIA CLASS Member can be adjudicated on a class- wide basis as unlawful, unfair,
15 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as
16 causation, damages, and reliance are not elements of this claim.

17 30. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
18 CLASS Members is impracticable.

19 31. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
20 California law by:

- 21 a. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
22 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
23 in place company policies, practices and procedures that uniformly and
24 systematically failed to record and pay PLAINTIFF and the other members of the
25 CALIFORNIA CLASS for all time worked, including minimum wages owed and
26 overtime wages owed for work performed by these employees;

- b. Committing an act of unfair competition in violation of the UCL, by failing to provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members; and
- c. Committing an act of unfair competition in violation of the UCL, by failing to separately compensate PLAINTIFF and the CALIFORNIA CLASS Members for their rest breaks.

32. The Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this First Amended Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on a piece-rate basis who was subjected to the DEFENDANTS' deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANTS' employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANTS; and
- d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and have retained counsel who are competent and experienced in Class Action litigation. There are no material

1 conflicts between the claims of the representative PLAINTIFF and the members
2 of the CALIFORNIA CLASS that would make class certification inappropriate.
3 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
4 CALIFORNIA CLASS Members.

5 33. In addition to meeting the statutory prerequisites to a Class Action, this action is
6 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

7 a. Without class certification and determination of declaratory, injunctive, statutory
8 and other legal questions within the class format, prosecution of separate actions
9 by individual members of the CALIFORNIA CLASS will create the risk of:

10 i. Inconsistent or varying adjudications with respect to individual members
11 of the CALIFORNIA CLASS which would establish incompatible
12 standards of conduct for the parties opposing the CALIFORNIA CLASS;
13 and/or;

14 ii. Adjudication with respect to individual members of the CALIFORNIA
15 CLASS which would as a practical matter be dispositive of interests of the
16 other members not party to the adjudication or substantially impair or
17 impede their ability to protect their interests.

18 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
19 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
20 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
21 DEFENDANTS uniformly failed to pay all wages due to members of the
22 CALIFORNIA CLASS as required by law;

23 i. With respect to the First Cause of Action, the final relief on behalf of the
24 CALIFORNIA CLASS sought does not relate exclusively to restitution
25 because through this claim PLAINTIFF seeks declaratory relief holding
26 that the DEFENDANTS' policy and practices constitute unfair
27 competition, along with declaratory relief, injunctive relief, and incidental
28

equitable relief as may be necessary to prevent and remedy the conduct
declared to constitute unfair competition;

c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or;

2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS or with a subsequent

1 employer, the Class Action is the only means to assert their claims through
2 a representative; and

3 iv. A class action is superior to other available methods for the fair and
4 efficient adjudication of this litigation because class treatment will obviate
5 the need for unduly and unnecessary duplicative litigation that is likely to
6 result in the absence of certification of this action pursuant to Cal. Code of
7 Civ. Proc. § 382.

8 34. The Court should permit this action to be maintained as a Class Action pursuant
9 to Cal. Code of Civ. Proc. § 382 because:

- 10 a. The questions of law and fact common to the CALIFORNIA CLASS predominate
11 over any question affecting only individual CALIFORNIA CLASS Members
12 because the DEFENDANTS' employment practices were uniform and
13 systematically applied with respect to the CALIFORNIA CLASS.
- 14 b. A Class Action is superior to any other available method for the fair and efficient
15 adjudication of the claims of the members of the CALIFORNIA CLASS because
16 in the context of employment litigation a substantial number of individual
17 CALIFORNIA CLASS Members will avoid asserting their rights individually out
18 of fear of retaliation or adverse impact on their employment;
- 19 c. The members of the CALIFORNIA CLASS are so numerous that it is impractical
20 to bring all members of the CALIFORNIA CLASS before the Court;
- 21 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
22 obtain effective and economic legal redress unless the action is maintained as a
23 Class Action;
- 24 e. There is a community of interest in obtaining appropriate legal and equitable relief
25 for the acts of unfair competition, statutory violations and other improprieties, and
26 in obtaining adequate compensation for the damages and injuries which
27 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
28

- 1 f. There is a community of interest in ensuring that the combined assets of
2 DEFENDANTS are sufficient to adequately compensate the members of the
3 CALIFORNIA CLASS for the injuries sustained;
- 4 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
5 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
6 with respect to the CALIFORNIA CLASS as a whole;
- 7 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
8 business records of DEFENDANTS; and
- 9 i. Class treatment provides manageable judicial treatment calculated to bring an
10 efficient and rapid conclusion to all litigation of all wage and hour related claims
11 arising out of the conduct of DEFENDANTS as to the members of the
12 CALIFORNIA CLASS.

13 35. DEFENDANTS maintain records from which the Court can ascertain and identify
14 by job title each of DEFENDANTS' employees who as have been systematically, intentionally,
15 and uniformly subjected to DEFENDANTS' company policy, practices and procedures as herein
16 alleged. PLAINTIFF will seek leave to amend this First Amended Complaint to include any
17 additional job titles of similarly situated employees when they have been identified.

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 36. PLAINTIFF further brings the Second, Third, Fourth Fifth, Sixth, Seventh, and
20 Eighth causes of Action on behalf of a California sub-class, defined as all persons who are or
21 previously were employed by Defendant Dreamstyle LLC and/or Defendant Dreamstyle Inc.
22 and/or Defendant Dreamstyle Remodeling in California who were classified as non-exempt
23 employees, including those who were paid in whole or in part on a piece rate basis (the
24 "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning three years
25 from the date of the filing of the original Complaint and ending on the date as determined by the
26 Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc.
27 § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-
28 CLASS Members is under five million dollars (\$5,000,000.00).

1 37. DEFENDANTS, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, willfully,
4 and systematically willfully, engaged in a practice whereby DEFENDANTS failed to correctly
5 calculate compensation for the time worked by PLAINTIFF and the other members of the
6 CALIFORNIA LABOR SUB-CLASS and separately compensated rest breaks owed to these
7 employees, even though DEFENDANTS enjoyed the benefit of this work, required employees to
8 perform this work and permitted or suffered to permit this work. DEFENDANTS have uniformly
9 denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees
10 are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable
11 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
12 DEFENDANTS, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
13 accordingly.

14 38. DEFENDANTS maintain records from which the Court can ascertain and identify
15 by name and job title, each of DEFENDANTS’ employees who have been systematically,
16 intentionally, and uniformly subjected to DEFENDANTS’ company policy, practices, and
17 procedures as herein alleged. PLAINTIFF will seek leave to amend this First Amended Complaint
18 to include these additional job titles when they have been identified.

19 39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
20 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

21 40. Common questions of law and fact exist as to members of the CALIFORNIA
22 LABOR SUB-CLASS, including, but not limited, to the following:

- 23 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
24 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
25 minimum wages, overtime wages, missed meal and rest breaks in violation of the
26 California Labor Code and California regulations and the applicable California
27 Wage Order;
28

- b. Whether DEFENDANTS failed to provide the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- c. Whether DEFENDANTS have engaged in unfair competition by the above-listed conduct;
- d. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- e. Whether DEFENDANTS' conduct was willful.

41. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks, and to separately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for rest breaks;

1 e. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an
2 employee is discharged or quits from employment, the employer must pay the
3 employee all wages due without abatement, by failing to tender full payment
4 and/or restitution of wages owed or in the manner required by California law to
5 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
6 their employment.

7 42. This Class Action meets the statutory prerequisites for the maintenance of a Class
8 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

9 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
10 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
11 is impracticable and the disposition of their claims as a class will benefit the parties
12 and the Court;

13 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
14 raised in this First Amended Complaint are common to the CALIFORNIA
15 LABOR SUB-CLASS and will apply uniformly to every member of the
16 CALIFORNIA LABOR SUB-CLASS;

17 c. The claims of the representative PLAINTIFF are typical of the claims of each
18 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
19 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
20 employee paid on a piece-rate basis who was subjected to the DEFENDANTS'
21 practice and policy which failed to pay the correct amount of wages due to the
22 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
23 a result of DEFENDANTS' employment practices. PLAINTIFF and the members
24 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
25 harmed by the same unlawful, deceptive, unfair, and pervasive pattern of
26 misconduct engaged in by DEFENDANTS; and

27 d. The representative PLAINTIFF will fairly and adequately represent and protect
28 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel

1 who are competent and experienced in Class Action litigation. There are no
2 material conflicts between the claims of the representative PLAINTIFF and the
3 members of the CALIFORNIA LABOR SUB-CLASS that would make class
4 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
5 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
6 Members.

7 43. In addition to meeting the statutory prerequisites to a Class Action, this action is
8 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

9 a. Without class certification and determination of declaratory, injunctive, statutory
10 and other legal questions within the class format, prosecution of separate actions
11 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
12 the risk of:

13 i. Inconsistent or varying adjudications with respect to individual members
14 of the CALIFORNIA LABOR SUB-CLASS which would establish
15 incompatible standards of conduct for the parties opposing the
16 CALIFORNIA LABOR SUB-CLASS; or

17 ii. Adjudication with respect to individual members of the CALIFORNIA
18 LABOR SUB-CLASS which would as a practical matter be dispositive of
19 interests of the other members not party to the adjudication or substantially
20 impair or impede their ability to protect their interests.

21 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
22 refused to act on grounds generally applicable to the CALIFORNIA LABOR
23 SUB-CLASS, making appropriate class-wide relief with respect to the
24 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANTS
25 uniformly fail to pay all wages due. Including the correct wages for all time worked
26 by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

27 c. Common questions of law and fact predominate as to the members of the
28 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations

1 of California Law as listed above, and predominate over any question affecting
2 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
3 Action is superior to other available methods for the fair and efficient adjudication
4 of the controversy, including consideration of:

5 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
6 in individually controlling the prosecution or defense of separate actions in
7 that the substantial expense of individual actions will be avoided to recover
8 the relatively small amount of economic losses sustained by the individual
9 CALIFORNIA LABOR SUB-CLASS Members when compared to the
10 substantial expense and burden of individual prosecution of this litigation;

11 ii. Class certification will obviate the need for unduly duplicative litigation
12 that would create the risk of:

13 1. Inconsistent or varying adjudications with respect to individual
14 members of the CALIFORNIA LABOR SUB-CLASS, which
15 would establish incompatible standards of conduct for the
16 DEFENDANT; and/or,

17 2. Adjudications with respect to individual members of the
18 CALIFORNIA LABOR SUB-CLASS would as a practical matter
19 be dispositive of the interests of the other members not parties to
20 the adjudication or substantially impair or impede their ability to
21 protect their interests;

22 iii. In the context of wage litigation because a substantial number of individual
23 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their
24 legal rights out of fear of retaliation by DEFENDANT, which may
25 adversely affect an individual's job with DEFENDANT or with a
26 subsequent employer, the Class Action is the only means to assert their
27 claims through a representative; and,
28

1 iv. A class action is superior to other available methods for the fair and
2 efficient adjudication of this litigation because class treatment will obviate
3 the need for unduly and unnecessary duplicative litigation that is likely to
4 result in the absence of certification of this action pursuant to Cal. Code of
5 Civ. Proc. § 382.

6 44. This Court should permit this action to be maintained as a Class Action pursuant
7 to Cal. Code of Civ. Proc. § 382 because:

- 8 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
9 CLASS predominate over any question affecting only individual CALIFORNIA
10 LABOR SUB-CLASS Members;
- 11 b. A Class Action is superior to any other available method for the fair and efficient
12 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
13 CLASS because in the context of employment litigation a substantial number of
14 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
15 their rights individually out of fear of retaliation or adverse impact on their
16 employment;
- 17 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
18 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS
19 before the Court;
- 20 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
21 not be able to obtain effective and economic legal redress unless the action is
22 maintained as a Class Action;
- 23 e. There is a community of interest in obtaining appropriate legal and equitable relief
24 for the acts of unfair competition, statutory violations and other improprieties, and
25 in obtaining adequate compensation for the damages and injuries which
26 DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-
27 CLASS;
- 28

- 1 f. There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of the
3 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
5 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
6 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 7 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
8 ascertainable from the business records of DEFENDANT. The CALIFORNIA
9 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were
10 employed by DEFENDANT in California during the CALIFORNIA LABOR
11 SUB-CLASS PERIOD; and
- 12 i. Class treatment provides manageable judicial treatment calculated to bring an
13 efficient and rapid conclusion to all litigation of all wage and hour related claims
14 arising out of the conduct of DEFENDANT as to the members of the
15 CALIFORNIA LABOR SUB-CLASS.

16 **FIRST CAUSE OF ACTION**

17 **UNLAWFUL BUSINESS PRACTICES**

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

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

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

23 46. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
24 Code § 17021.

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

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

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

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

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

27 51. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
28 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with
2 DEFENDANT.

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

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

12 54. PLAINTIFF further demands on behalf of themselves and on behalf of each
13 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
14 not timely provided as required by law.

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

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

26 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
27 and do, seek such relief as may be necessary to restore to them the money and property which
28 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the

1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
2 business practices, including earned but unpaid wages for all time worked.

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

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

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

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

17 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all**
18 **Defendants)**

19 60. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
20 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
21 this First Amended Complaint.

22 61. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code
24 and the Industrial Welfare Commission requirements for DEFENDANT'S failure to accurately
25 calculate and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

26 62. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
27 policy, an employer must timely pay its employees for all hours worked.
28

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

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

6 65. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
7 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
8 of time they worked, and instead paying PLAINTIFF and other members of the CALIFORNIA
9 LABOR SUB-CLASS on a piece-rate per-visit basis. As set forth herein, DEFENDANT'S
10 uniform policy and practice was to unlawfully and intentionally deny timely payment of wages
11 due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

12 66. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
13 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
14 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
15 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
16 pay.

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

23 68. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
25 the minimum wage compensation for all their time worked for DEFENDANT.

26 69. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
27 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked than
28 they were entitled to, constituting a failure to pay all earned wages.

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

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

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

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

1 LABOR SUB-CLASS Members. DEFENDANT’S conduct as alleged herein was willful,
2 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
3 CLASS Members are entitled to seek and recover statutory costs.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME COMPENSATION**

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

7 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all**
8 **Defendants)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

19 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
20 **Defendants)**

21 90. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
22 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
23 this First Amended Complaint.

24 91. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
25 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
26 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of
27 the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did
28 not prevent these employees from being relieved of all of their duties for the legally required off-

1 duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
2 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
3 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
4 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
5 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
6 Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with
7 a second off-duty meal period in some workdays in which these employees were required by
8 DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other members of
9 the CALIFORNIA LABOR SUB-CLASS forfeited meal breaks without additional compensation
10 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

22 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
23 **Defendants)**

24 94. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
25 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
26 this First Amended Complaint.

27 95. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
28 Members were required to work in excess of four (4) hours without being provided ten (10) minute

1 rest periods. Further, these employees were denied their first rest periods of at least ten (10)
2 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period
3 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a
4 first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
5 hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also
6 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
7 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied
8 their proper rest periods by DEFENDANT and DEFENDANT's managers. In addition, because
9 of DEFENDANT's pay plan for PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
10 Members (being paid a flat rate only), DEFENDANT failed to compensate PLAINTIFF and
11 CALIFORNIA LABOR SUB- CLASS Members for their rest periods as required by the
12 applicable Wage Order and Labor Code. DEFENDANT did not have a policy or practice which
13 paid for off-duty rest periods to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS
14 Members when they were paid piece rate pay only. As a result, DEFENDANT's failure to provide
15 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with all the legally required
16 paid rest periods is evidenced by DEFENDANT's business records.

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

22 97. As a proximate result of the aforementioned violations, PLAINTIFF and
23 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to
24 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

3

4
5

6
7
8

9
10

- 11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 100. When DEFENDANT did not accurately record PLAINTIFF's and other
2 CALIFORNIA LABOR SUB-CLASS Members' wages, and missed meal and rest breaks, and
3 separately compensated rest periods, DEFENDANT violated Cal. Lab. Code § 226 in that
4 DEFENDANT failed to provide an accurate wage statement in writing that properly and
5 accurately itemizes all wages, and missed meal and rest periods and reporting time wages owed
6 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby
7 also failed to set forth the correct wages earned by the employees. Further, from time to time,
8 DEFENDANT included Vacation hours into the computation of total hours worked for purposes
9 of Cal. Lab. Code § 226(a)(2), notwithstanding the fact that Vacation hours are not considered
10 hours worked. DEFENDANT's inclusion of Vacation hours into the total hours worked in
11 itemized wage statements issued to PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
12 Members violates Cal. Lab. Code § 226(a)(2). Aside from the violations listed above in this
13 paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all
14 the requirements under California Labor Code 226 *et seq.*

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

26
27 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

17
18
19
20
21
22
23
24
25
26
27
28

20
21
22
23
24
25
26
27
28

21
22
23
24
25
26
27
28

1 for purposes of the requirement to provide payment within 72 hours of the notice of
2 quitting.

3 106. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-
4 CLASS Members' employment contract.

5 107. Cal. Lab. Code § 203 provides:

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

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

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

21 **EIGHTH CAUSE OF ACTION**

22 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

23 **(Cal. Lab. Code §§ 2802)**

24 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
25 **Defendants)**

26 110. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
27 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
28 this First Amended Complaint.

111. 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.

112. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT'S benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones and personal vehicles all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell phones and personal vehicles for work-related business. DEFENDANT'S uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones and personal vehicles for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT are estopped by DEFENDANT'S conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

1 **NINTH CAUSE OF ACTION**

2 **VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT**

3 **(Cal. Lab. Code §§ 2698 *et seq.*)**

4 *(Alleged by PLAINTIFF in his representative capacity against all Defendants)*

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

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

16 3. PLAINTIFF brings this Representative Action on behalf of the State of California
17 with respect to himself and all of DEFENDANT'S current and former non-exempt employees
18 employed in California ("AGGRIEVED EMPLOYEES") between February 18, 2020 and a future
19 date set by this Court ("PAGA PERIOD").

20 4. To the extent equitable tolling operates to toll the claims asserted by the
21 PLAINTIFF against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

22 5. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
23 similarly situated employees were aggrieved employees of DEFENDANT within the meaning of
24 Labor Code Section 2699(c).

25 6. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,
26 like PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil
27 action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3
28

1 7. PLAINTIFF complied with the procedures for bringing suit specified in Labor
2 Code Section 2699.3. By certified letter, return receipt requested, dated February 18, 2021,
3 PLAINTIFF gave written notice to the Labor and Workforce Development Agency (“LWDA”)
4 and to DEENDANT of the specific provisions of the Labor Code alleged to have been violated,
5 including the facts and theories to support the alleged violations.

6 8. As of the date of this filing, the LWDA has not provided any notice by certified
7 mail of its intent to investigate the DEFENDANTS’ alleged violations as mandated by Labor
8 Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A,
9 PLAINTIFF may commence and is authorized to pursue this cause of action.

10 9. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and similarly
11 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of
12 Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
13 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804 in the
14 following amounts:

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

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

25 c. For violations of Labor Code Sections 204, a civil penalty in
26 the amount of one hundred dollars (\$100) for each AGGRIEVED
27 EMPLOYEE for any initial violation and two hundred dollars (\$200)
28 for AGGIEVED EMPLOYEE for each subsequent violation [penalty

per Labor Code Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and hundred dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

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

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

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

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and

1. On behalf of the CALIFORNIA CLASS:
 - a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
 - b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
 - c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFFS and the other members of the CALIFORNIA CLASS; and
 - d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.
2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
 - a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-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 wages, overtime compensation, unreimbursed expenses, and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-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 LABOR SUB-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 LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On behalf of the State of California and the AGGRIEVED EMPLOYEES

a. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including pursuant to Cal. Cal. Code § 2699, et seq.

b. For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act; and

c. For such other relief as the Court deems just and proper

4. On all claims:

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

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

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

DATED: April 25, 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: April 25, 2022

ZAKAY LAW GROUP, APLC

By:  _____

Shani O. Zakay
Attorney for PLAINTIFF