

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

WATER DAMAGE RESCUE, INC., a California corporation; and
DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

MARVIN GLENN HOLLOWAY, an individual, on behalf of himself
and on behalf of all persons similarly situated,

FILED
Superior Court of California,
FOR COURT USE ONLY
(SOLAMENTE PARA USO DE LA CORTE)
05/13/2022
mvalledor
By _____, Deputy
Case Number:
34-2022-00319781

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):

Sacramento Superior Court, Gordon D. Schaber Courthouse
720 9th Street
Sacramento, CA 95814

CASE NUMBER:
(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, Esq. (SBN 277924); Zakay Law Group, APLC
5440 Morehouse Drive, Suite 3600, San Diego, CA 92121; T: (619) 255-9047 F: (858) 404-9203

DATE:

(Fecha)

MAY 13 2022

Clerk, by

(Secretario)

Deputy

(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 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

Pago 1 of 1

Via Fax

FILED
Superior Court Of California,
Sacramento
05/10/2022
mvalledor
By _____, Deputy
Case Number:
34-2022-00319781

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Attorneys for Plaintiff MARVIN GLENN HOLLOWAY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

MARVIN GLENN HOLLOWAY, an
individual, on behalf of himself and on behalf of
all persons similarly situated,

Plaintiff,

v.

WATER DAMAGE RESCUE, INC., a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

Via Fax

DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN
VIOLATION OF CALIFORNIA LABOR
CODE §2802;
9) FAILURE TO PROVIDE PERSONNEL
FILES IN VIOLATION OF CAL. LAB.
CODE § 1198.5;
10) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ.].

DEMAND FOR A JURY TRIAL

Plaintiff MARVIN GLENN HOLLOWAY (“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 WATER DAMAGE RESCUE, INC. (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, owns, operates, and/or manages water damage mitigation services throughout the county of Sacramento.

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

3. The agents, servants, and/or employees of the DEFENDANT and each of them acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendant, and personally participated in the conduct

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

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

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

17 6. PLAINTIFF was employed by DEFENDANT as a lead water technician in
18 California from August of 2021 to October of 2021 and at all times has been classified by
19 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
20 required meal and rest periods and payment of minimum and overtime wages due for all time
21 worked.

22 7. PLAINTIFF brings this Class Action on behalf of himself and a California class,
23 defined as all persons who are or previously were employed by DEFENDANT in California and
24 classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period
25 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
26 by the Court (the "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).

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

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

9 9. DEFENDANT's uniform policies and practices alleged herein were unlawful,
10 unfair, and deceptive business practices whereby DEFENDANT retained and continues to retain
11 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

12 10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
13 injunction enjoining such conduct by DEFENDANT in the future, relief for the named
14 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
15 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
16 equitable relief.

17 **JURISDICTION AND VENUE**

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

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

27 **THE CONDUCT**

28 13. In violation of the applicable sections of the California Labor Code and the

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

18 **A. Meal Period Violations**

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

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

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

25 **B. Rest Period Violations**

26 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
27 CALIFORNIA CLASS members were also required from time to time to work in excess of four
28 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work

1 requirements and DEFENDANT's inadequate staffing. Further, for the same reasons these
2 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
3 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
4 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
5 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
6 hours or more from time to time. Further, from time to time, when they were provided with rest
7 periods, PLAINTIFF and other CALIFORNIA CLASS Members were required to remain on
8 duty, on call, on the premises, and/or to carry cordless communication devices and respond to
9 communications received on said devices during what was supposed to be their off-duty rest
10 periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with
11 one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's
12 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
13 time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

14 **C. Unreimbursed Business Expenses**

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

26 18. In the course of their employment, DEFENDANT required PLAINTIFF and other
27 CALIFORNIA CLASS Members to use their personal cell phones and incur personal expenses
28 to maintain their work uniforms as a result of and in furtherance of their job duties as employees

1 for DEFENDANT. But for the use of their own personal cell phones and personal expenses for
2 the maintenance of their uniforms, PLAINTIFF and the CALIFORNIA CLASS Members could
3 not complete their essential job duties. However, DEFENDANT unlawfully failed to reimburse
4 PLAINTIFF and other CALIFORNIA CLASS Members for their use of their personal cell phones
5 and maintenance of their uniforms. As a result, in the course of their employment with
6 DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS Members incurred
7 unreimbursed business expenses, but were not limited to, costs related to the use of their personal
8 cellular phones and uniform maintenance, all on behalf of and for the benefit of DEFENDANT.

9 **D. Wage Statement Violations**

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

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

26 21. Further, DEFENDANT, from time to time, failed to provide PLAINTIFF and the
27 CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226.
28

Specifically, DEFENDANT failed to include the correct total number of hours worked on the wage statements.

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

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

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

24. During the CLASS PERIOD, from time-to-time DEFENDANT required PLAINTIFF and other members of the CALIFORNIA CLASS to perform post-shift work, including but not limited to, completing reports, communicating with supervisors, and spending time under DEFENDANT's control for which he was not compensated. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

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

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

27. DEFENDANT was able to track the amount of time PLAINTIFF and the other members of the CALIFORNIA CLASS spent working; however, DEFENDANT 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 post-shift tasks.

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

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

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

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

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

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

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

1 34. In violation of the applicable sections of the California Labor Code and the
2 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
3 matter of company policy, practice and procedure, intentionally and knowingly failed to
4 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
5 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
6 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
7 of the correct overtime and double time compensation, meal and rest period premiums, and sick
8 pay as required by California law which allowed DEFENDANT to illegally profit and gain an
9 unfair advantage over competitors who complied with the law. To the extent equitable tolling
10 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the
11 CLASS PERIOD should be adjusted accordingly.

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

13 35. Pursuant to California Labor Code section 204, PLAINTIFF and the
14 CALIFORNIA CLASS members were entitled to timely payment of wages during their
15 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
16 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
17 meal period premium wages, and rest period premium wages within permissible time period.

18 **H. Failure to Provide Personnel Files**

19 36. Subsequent to PLAINTIFF'S termination, on December 21, 2021, PLAINTIFF
20 caused written requests via certified mail to be delivered to DEFENDANTS for PLAINTIFF'S
21 personnel and employment records, including but not limited to (1) payroll records; (2)
22 employment contracts; (3) itemized pay stubs; and (4) PLAINTIFF'S complete employment file.

23 37. DEFENDANTS failed to provide and/or make available to PLAINTIFF his
24 personnel records, payroll records, employment contracts, and entire employment file within (30)
25 days of all her requests stated above. In fact, as of the date of filing of this complaint,
26 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
27 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide
28 PLAINTIFF with her employment file. Section 1198.5 states that employees (and former

employees) have the right to inspect personnel records maintained by the employer “related to the employee’s performance or to any grievance concerning the employee.” Employers must allow inspection or copying within thirty (30) days of the request. PLAINTIFF requested his employment file via certified mail and DEFENDANTS failed to respond. As a result, PLAINTIFF is now entitled to and requests injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, a statutory penalty, and an award of attorneys’ fees and costs for bringing this action.

I. Unlawful Rounding Violations

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

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

1 DEFENDANTS for more than ten (10) hours during a shift without receiving a second off-duty
2 meal break.

3 **J. Reporting Time Violations**

4 40. The applicable Wage Order requires that on each workday that an employee
5 reports for work, as scheduled, but is not put to work or is furnished less than half of the
6 employee's usual or scheduled day's work, the employee shall be paid for half the usual or
7 scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at
8 the employee's regular rate of pay, which shall not be less than the minimum wage. The
9 applicable Wage Order denominates this as "Reporting Time Pay."

10 41. Specifically, DEFENDANTS required PLAINTIFF and other CALIFORNIA
11 CLASS Members to report to work and/or remain on-call when assigned to their various shifts.
12 From time-to-time, over the course of their employment, PLAINTIFF and other CALIFORNIA
13 CLASS Members, reported to work and/or remained on-call as required by DEFENDANTS. On
14 these days, PLAINTIFF and other CALIFORNIA CLASS Members were not put to work and/or
15 were not furnished with work for less than half of their scheduled shift. When PLAINTIFF and
16 other CALIFORNIA CLASS Members report to work, as scheduled, but are furnished less than
17 half of their scheduled day's work, PLAINTIFF and other CALIFORNIA CLASS Members are
18 not compensated with Reporting Time pay, as required by the applicable Wage Order, in that they
19 are not paid a minimum of two hours or for half of their scheduled day's work, not to exceed four
20 hours.

21 **K. Unlawful Deductions**

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

26 43. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
27 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
28 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)

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

19 **L. CLASS ACTION ALLEGATIONS**

20 44. PLAINTIFF brings the First through Ninth Causes of Action as a class action
21 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANT's current
22 and former non-exempt California employees ("CALIFORNIA CLASS") during the period
23 beginning four years prior to the filing of the Complaint and ending on a date determined by the
24 Court ("CLASS PERIOD").

25 45. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
26 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
27 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
28 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate

1 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
2 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

3 46. The members of the class are so numerous that joinder of all class members is
4 impractical.

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

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

1 h. Whether DEFENDANT committed an act of unfair competition by systematically
2 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
3 CLASS for all time worked;

4 i. Whether DEFENDANT committed an act of unfair competition by systematically
5 failing to record all meal and rest breaks missed by PLAINTIFF and other
6 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
7 of this work, required employees to perform this work and permits or suffers to
8 permit this work;

9 j. Whether DEFENDANT committed an act of unfair competition in violation of the
10 UCL, by failing to provide the PLAINTIFF and the other members of the
11 CALIFORNIA CLASS with the legally required meal and rest periods.

12 48. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
13 a result of DEFENDANT's conduct and actions alleged herein.

14 49. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
15 the same interests as the other members of the class.

16 50. PLAINTIFF will fairly and adequately represent and protect the interests of the
17 CALIFORNIA CLASS Members.

18 51. PLAINTIFF retained able class counsel with extensive experience in class action
19 litigation.

20 52. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
21 interests of the other CALIFORNIA CLASS Members.

22 53. There is a strong community of interest among PLAINTIFF and the members of
23 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
24 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
25 sustained.

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

55. 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.

56. 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 DEFENDANT.

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)

57. 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.

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

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

5 Any person who engages, has engaged, or proposes to engage in unfair competition
6 may be enjoined in any court of competent jurisdiction. The court may make such
7 orders or judgments, including the appointment of a receiver, as may be necessary
8 to prevent the use or employment by any person of any practice which constitutes
9 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).

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

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

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

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

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

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

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

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

23 68. All the acts described herein as violations of, among other things, the Industrial
24 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
25 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
26 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
27 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*
28

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

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

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

17 **SECOND CAUSE OF ACTION**

18 **Failure To Pay Minimum Wages**

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

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

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

24 73. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
25 for DEFENDANT’S willful and intentional violations of the California Labor Code and the
26 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate
27 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.
28

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

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

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

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

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

17 79. 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 CLASS. DEFENDANT acted
20 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
21 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
22 laws and regulations.

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

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

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

6 83. DEFENDANT knew or should have known that PLAINTIFF and the other
7 members of the CALIFORNIA CLASS are under-compensated for their time worked.
8 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 CLASS the correct minimum wages
12 for their time worked.

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

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

THIRD CAUSE OF ACTION

Failure To Pay Overtime Compensation

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

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

86. 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.

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

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

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

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

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

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

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

14 94. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
15 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
16 compensation for overtime worked.

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

25 96. During the CLASS PERIOD, PLAINTIFF and the other members of the
26 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
27 constituting a failure to pay all earned wages.

28

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

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

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

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

26 101. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
27 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
28 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a

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

9 **FOURTH CAUSE OF ACTION**

10 **Failure To Provide Required Meal Periods**

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

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

13 102. 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.

16 103. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
17 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
18 required by the applicable Wage Order and Labor Code. The nature of the work performed by
19 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
20 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
21 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
22 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
23 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
24 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
25 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
26 Members with a second off-duty meal period in some workdays in which these employees were
27 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
28

1 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
2 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

11 **FIFTH CAUSE OF ACTION**

12 **Failure To Provide Required Rest Periods**

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

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

15 106. 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.

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

1 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide
2 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
3 periods is evidenced by DEFENDANT's business records.

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

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

12 **SIXTH CAUSE OF ACTION**

13 **Failure To Provide Accurate Itemized Statements**

14 **(Cal. Lab. Code §§ 226)**

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

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

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

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

112. When DEFENDANT did not accurately record PLAINTIFF's and other CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, and separately compensated meal and rest periods, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that properly and accurately itemizes all wages, and missed meal and rest periods and reporting time wages owed to PLAINTIFF and the other members of the CALIFORNIA CLASS and thereby also failed to set forth the correct wages earned by the employees.

113. 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).

///

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)**

5 114. 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.

8 115. 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.

16 116. 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."

19 117. 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.

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

31 119. Cal. Lab. Code § 203 provides:

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

1 practice and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA
2 CLASS for expenses resulting from using their personal cellular phones and/or uniform
3 maintenance for DEFENDANT within the course and scope of their employment for
4 DEFENDANT. These expenses were necessary to complete their principal job duties.
5 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of their expectation.
6 Although these expenses were necessary expenses incurred by PLAINTIFF and the members of
7 the CALIFORNIA CLASS, DEFENDANT failed to indemnify and reimburse PLAINTIFF and
8 the members of the CALIFORNIA CLASS for these expenses as an employer is required to do
9 under the laws and regulations of California.

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

14 **NINTH CAUSE OF ACTION**

15 **FOR FAILURE TO PROVIDE PERSONNEL FILES**

16 **[Cal. Lab. Code § 1198.5]**

17 **(By PLAINTIFF Against All DEFENDANTS)**

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

20 127. Subsequent to PLAINTIFF'S termination, on December 21, 2021, PLAINTIFF
21 caused written requests via certified mail to be delivered to DEFENDANTS for PLAINTIFF'S
22 personnel and employment records, including but not limited to (1) payroll records; (2)
23 employment contracts; (3) itemized pay stubs; and (4) PLAINTIFF'S complete employment file.

24 128. DEFENDANTS failed to provide and/or make available to PLAINTIFF her
25 personnel records, payroll records, employment contracts, and entire employment file within (30)
26 days of his request stated above. In fact, as of the date of filing of this complaint, DEFENDANTS
27 have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.
28

129. DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide PLAINTIFF with his employment file. Section 1198.5 states that employees (and former employees) have the right to inspect personnel records maintained by the employer “related to the employee’s performance or to any grievance concerning the employee.” Employers must allow inspection or copying within thirty (30) days of the request. PLAINTIFF requested his employment file via certified mail and DEFENDANTS failed to respond. As a result, PLAINTIFF is now entitled to and requests injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, a statutory penalty, and an award of attorneys’ fees and costs for bringing this action.

TENTH CAUSE OF ACTION

VIOLATIONS OF THE PRIVATE ATTORNEYS GENERAL ACT

[Cal. Lab. Code §§ 2698, et seq.]

(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)

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

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

132. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by DEFENDANT and classified as non-exempt employees in California during the time period of March 4, 2021 until the present (the

1 “AGGRIEVED EMPLOYEES”).

2 133. On March 4, 2022, PLAINTIFF gave written notice by certified mail to the Labor
3 and Workforce Development Agency (the “Agency”) and the employer of the specific provisions
4 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1,
5 attached hereto and incorporated by this reference herein. The statutory waiting period for
6 PLAINTIFF to add these allegations to the original Complaint have expired. As a result, pursuant
7 to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
8 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
9 EMPLOYEES as herein defined.

10 134. The policies, acts, and practices heretofore described were and are in unlawful
11 business act or practice because DEFENDANT (a) failed to properly record and pay PLAINTIFF
12 and the other AGGRIEVED EMPLOYEES for all the hours they worked, including minimum and
13 overtime hours in violation of the Wage Order, (b) failed to provide PLAINTIFF and other
14 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate
15 itemized wage statements, (d) failed to reimburse PLAINTIFF and the other AGGRIEVED
16 EMPLOYEES for required business expenses, (e) failed to pay meal and rest break premiums at
17 the correct rate, (f) failed to correctly calculate the regular rate of pay, and (g) failed to timely pay
18 wages, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 201.3,
19 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5,
20 1194, 1197, 1197.1, 1197.14 1198, 1199, 2802, and 2804, and the applicable wage orders, and
21 thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks
22 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
23 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
24 and the other AGGRIEVED EMPLOYEES.

25 135. Some or all of the conduct and violations alleged herein occurred during the PAGA
26 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
27 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
28 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30

1 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
2 745, 751 [“PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code
3 violation committed by an employer—to pursue penalties for all the Labor Code violations
4 committed by that employer.”], Emphasis added, reh’g denied (June 13, 2018).)

5 **PRAYER FOR RELIEF**

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

8 1. On behalf of the CALIFORNIA CLASS:

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

19 2. On behalf of the CALIFORNIA CLASS:

- 20 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
21 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
22 pursuant to Cal. Code of Civ. Proc. § 382;
23 b. Compensatory damages, according to proof at trial, including compensatory
24 damages for overtime compensation and separately owed rest periods, due to
25 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
26 applicable CLASS PERIOD plus interest thereon at the statutory rate;
27 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
28 the applicable IWC Wage Order;

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

17 DATED: May 9, 2022
18

19 **ZAKAY LAW GROUP, APLC**

20
21 By: 
22 Shani O. Zakay
23 Attorney for PLAINTIFF
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

DATED: May 9, 2022

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1



5440 Morehouse Drive, Suite 3600
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Eduardo Garcia, Esq.
egarcia@jcl-lawfirm.com

March 4, 2022

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

WATER DAMAGE RESCUE, INC.

c/o ORI LAZAROVITS
7232 Owensmouth Ave.
Canoga Park, CA 91303

Sent via Certified Mail and Return Receipt No. 7021 2720 0000 9972 6020

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 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 MARVIN GLENN HOLLOWAY (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant WATER DAMAGE RESCUE, INC. (“Defendant”). Plaintiff was employed by Defendant in California from August of 2021 to October 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, 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 'JC 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 MARVIN GLENN HOLLOWAY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

MARVIN GLENN HOLLOWAY, an
individual, on behalf of himself and on behalf of
all persons similarly situated,

Plaintiff,

v.

WATER DAMAGE RESCUE, INC., a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN
VIOLATION OF CALIFORNIA LABOR
CODE §2802;
9) FAILURE TO PROVIDE PERSONNEL
FILES IN VIOLATION OF CAL. LAB.
CODE § 1198.5.

DEMAND FOR A JURY TRIAL

Plaintiff MARVIN GLENN HOLLOWAY (“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 WATER DAMAGE RESCUE, INC. (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, owns, operates, and/or manages water damage mitigation services throughout the county of Sacramento.

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

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

1 all DEFENDANT are jointly and severally liable to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
3 Defendant's agents, servants and/or employees.

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

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

15 6. PLAINTIFF was employed by DEFENDANT as a lead water technician in
16 California from August of 2021 to October of 2021 and at all times has been classified by
17 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
18 required meal and rest periods and payment of minimum and overtime wages due for all time
19 worked.

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 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 8. 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
herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained

1 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
2 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
3 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
4 other members of the CALIFORNIA CLASS who have been economically injured by
5 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
6 relief.

7 9. DEFENDANT's uniform policies and practices alleged herein were unlawful,
8 unfair, and deceptive business practices whereby DEFENDANT retained and continues to retain
9 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

15 **JURISDICTION AND VENUE**

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

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

25 **THE CONDUCT**

26 13. 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 provide legally compliant meal and rest periods, failed to accurately compensate
2 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
3 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
4 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
5 and the other members of the CALIFORNIA CLASS overtime, double time, meal and rest period
6 premiums and sick pay at the correct regular rate of pay, failed to reimburse PLAINTIFF and
7 other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF
8 and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing,
9 among other things, all applicable hourly rates in effect during the pay periods and the
10 corresponding amount of time worked at each hourly rate. DEFENDANT's uniform policies and
11 practices are intended to purposefully avoid the accurate and full payment for all time worked as
12 required by California law which allows DEFENDANT to illegally profit and gain an unfair
13 advantage over competitors who comply with the law. To the extent equitable tolling operates to
14 toll claims by the CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be
15 adjusted accordingly.

16 **A. Meal Period Violations**

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

1 rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
2 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
3 records.

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

23 **B. Rest Period Violations**

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

1 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
2 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
3 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
4 hours or more from time to time. Further, from time to time, when they were provided with rest
5 periods, PLAINTIFF and other CALIFORNIA CLASS Members were required to remain on
6 duty, on call, on the premises, and/or to carry cordless communication devices and respond to
7 communications received on said devices during what was supposed to be their off-duty rest
8 periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with
9 one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's
10 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
11 time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

12 **C. Unreimbursed Business Expenses**

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

24 18. In the course of their employment, DEFENDANT required PLAINTIFF and other
25 CALIFORNIA CLASS Members to use their personal cell phones and incur personal expenses
26 to maintain their work uniforms as a result of and in furtherance of their job duties as employees
27 for DEFENDANT. But for the use of their own personal cell phones and personal expenses for
28 the maintenance of their uniforms, PLAINTIFF and the CALIFORNIA CLASS Members could

1 not complete their essential job duties. However, DEFENDANT unlawfully failed to reimburse
2 PLAINTIFF and other CALIFORNIA CLASS Members for their use of their personal cell phones
3 and maintenance of their uniforms. As a result, in the course of their employment with
4 DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS Members incurred
5 unreimbursed business expenses, but were not limited to, costs related to the use of their personal
6 cellular phones and uniform maintenance, all on behalf of and for the benefit of DEFENDANT.

7 **D. Wage Statement Violations**

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

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

24 21. Further, DEFENDANT, from time to time, failed to provide PLAINTIFF and the
25 CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226.
26 Specifically, DEFENDANT failed to include the correct total number of hours worked on the
27 wage statements.
28

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

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

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

24. During the CLASS PERIOD, from time-to-time DEFENDANT required PLAINTIFF and other members of the CALIFORNIA CLASS to perform post-shift work, including but not limited to, completing reports, communicating with supervisors, and spending time under DEFENDANT's control for which he was not compensated. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

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

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

27. DEFENDANT was able to track the amount of time PLAINTIFF and the other members of the CALIFORNIA CLASS spent working; however, DEFENDANT 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 post-shift tasks.

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

29. DEFENDANT's 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

1 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
2 hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

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

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

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

12 32. From time-to-time during the CLASS PERIOD, DEFENDANT 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. DEFENDANT's 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 DEFENDANT's business records.

21 33. 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 34. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
27 matter of company policy, practice and procedure, intentionally and knowingly failed to
28 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate

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

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

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

14 **H. Failure to Provide Personnel Files**

15 36. Subsequent to PLAINTIFF'S termination, on December 21, 2021, PLAINTIFF
16 caused written requests via certified mail to be delivered to DEFENDANTS for PLAINTIFF'S
17 personnel and employment records, including but not limited to (1) payroll records; (2)
18 employment contracts; (3) itemized pay stubs; and (4) PLAINTIFF'S complete employment file.

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

1 is now entitled to and requests injunctive relief to obtain compliance with Cal. Lab. Code Section
2 1198.5, a statutory penalty, and an award of attorneys' fees and costs for bringing this action.

3 **I. Unlawful Rounding Violations**

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

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

26 **J. Reporting Time Violations**

27 40. The applicable Wage Order requires that on each workday that an employee
28 reports for work, as scheduled, but is not put to work or is furnished less than half of the

1 employee's usual or scheduled day's work, the employee shall be paid for half the usual or
2 scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at
3 the employee's regular rate of pay, which shall not be less than the minimum wage. The
4 applicable Wage Order denominates this as "Reporting Time Pay."

5 41. Specifically, DEFENDANTS required PLAINTIFF and other CALIFORNIA
6 CLASS Members to report to work and/or remain on-call when assigned to their various shifts.
7 From time-to-time, over the course of their employment, PLAINTIFF and other CALIFORNIA
8 CLASS Members, reported to work and/or remained on-call as required by DEFENDANTS. On
9 these days, PLAINTIFF and other CALIFORNIA CLASS Members were not put to work and/or
10 were not furnished with work for less than half of their scheduled shift. When PLAINTIFF and
11 other CALIFORNIA CLASS Members report to work, as scheduled, but are furnished less than
12 half of their scheduled day's work, PLAINTIFF and other CALIFORNIA CLASS Members are
13 not compensated with Reporting Time pay, as required by the applicable Wage Order, in that they
14 are not paid a minimum of two hours or for half of their scheduled day's work, not to exceed four
15 hours.

16 **K. Unlawful Deductions**

17 42. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
18 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
19 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
20 DEFENDANTS violated Labor Code § 221.

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

1 premises during what was supposed to be his off-duty meal periods. PLAINTIFF therefore
2 forfeited meal and rest breaks without additional compensation and in accordance with
3 DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided
4 PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code § 226. Further,
5 DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to
6 the use of his personal cell phone and personal expenses incurred for uniform maintenance, on
7 behalf of and in furtherance of his employment with DEFENDANTS. Further, failed to provide
8 and/or make available to PLAINTIFF his personnel records, payroll records, employment
9 contracts, and entire employment file within (30) days of all her requests on December 21, 2021.
10 To date, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double
11 time compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code §
12 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or value
13 of \$75,000

14 **L. CLASS ACTION ALLEGATIONS**

15 44. PLAINTIFF brings the First through Ninth Causes of Action as a class action
16 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANT's current
17 and former non-exempt California employees ("CALIFORNIA CLASS") during the period
18 beginning four years prior to the filing of the Complaint and ending on a date determined by the
19 Court ("CLASS PERIOD").

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

26 46. The members of the class are so numerous that joinder of all class members is
27 impractical.
28

1 47. Common questions of law and fact regarding DEFENDANT's conduct, including
2 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to
3 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
4 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
5 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
6 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
7 minimum wage and overtime, exist as to all members of the class and predominate over any
8 questions affecting solely any individual members of the class. Among the questions of law and
9 fact common to the class are:

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

1 of this work, required employees to perform this work and permits or suffers to
2 permit this work;

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

6 48. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
7 a result of DEFENDANT's conduct and actions alleged herein.

8 49. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
9 the same interests as the other members of the class.

10 50. PLAINTIFF will fairly and adequately represent and protect the interests of the
11 CALIFORNIA CLASS Members.

12 51. PLAINTIFF retained able class counsel with extensive experience in class action
13 litigation.

14 52. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
15 interests of the other CALIFORNIA CLASS Members.

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

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

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

1 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
2 create the risk of:

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

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

13 **FIRST CAUSE OF ACTION**

14 **Unlawful Business Practices**

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

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

17 57. 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 58. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
21 Code § 17021.

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

26 Any person who engages, has engaged, or proposes to engage in unfair competition
27 may be enjoined in any court of competent jurisdiction. The court may make such
28 orders or judgments, including the appointment of a receiver, as may be necessary
to prevent the use or employment by any person of any practice which constitutes
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

1 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
2 17203).

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

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

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

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

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

1 65. 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 66. 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 67. 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 68. 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 69. 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 70. 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 71. 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 72. 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 73. 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 74. 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 75. 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 76. 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 77. 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 78. 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 79. 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 80. 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 81. 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 82. 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 83. 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 84. 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 85. 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 86. 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 87. 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 88. 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 89. 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 90. 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 91. 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 92. 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 93. 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 94. 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 95. 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 96. 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 97. 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 98. 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 99. DEFENDANT knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
3 DEFENDANT systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
5 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

7 100. 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.

15 101. 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)**

5 102. 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.

8 103. 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.

22 104. 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.
27
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1 105. As a proximate result of the aforementioned violations, PLAINTIFF and
2 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
3 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

4 **FIFTH CAUSE OF ACTION**

5 **Failure To Provide Required Rest Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

25 108. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
26 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
27 who were not provided a rest period, in accordance with the applicable Wage Order, one
28

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code §§ 226)**

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

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

12 111. Cal. Labor Code § 226 provides that an employer must furnish employees with an
13 "accurate itemized" statement in writing showing:

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

- 1 h. the name and address of the legal entity that is the employer, and
2 i. all applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee.

4 112. When DEFENDANT did not accurately record PLAINTIFF's and other
5 CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, and separately
6 compensated meal and rest periods, DEFENDANT violated Cal. Lab. Code § 226 in that
7 DEFENDANT failed to provide an accurate wage statement in writing that properly and
8 accurately itemizes all wages, and missed meal and rest periods and reporting time wages owed
9 to PLAINTIFF and the other members of the CALIFORNIA CLASS and thereby also failed to
10 set forth the correct wages earned by the employees.

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

22 **SEVENTH CAUSE OF ACTION**

23 **Failure To Pay Wages When Due**

24 **(Cal. Lab. Code §§ 203)**

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

26 114. 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.

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

As used in this article:

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

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

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

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

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

119. 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.

120. 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.

121. 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)

122. 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.

123. 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

124. From time-to-time during the CLASS PERIOD, DEFENDANT 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 DEFENDANT's benefit. DEFENDANT 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 and uniform maintenance all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANT to use their personal cell phones and uniform maintenance to execute their essential job duties on behalf of DEFENDANT. DEFENDANT's 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 and/or uniform maintenance for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANT failed to indemnify and reimburse PLAINTIFF and

1 the members of the CALIFORNIA CLASS for these expenses as an employer is required to do
2 under the laws and regulations of California.

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

7 **NINTH CAUSE OF ACTION**

8 **FOR FAILURE TO PROVIDE PERSONNEL FILES**

9 **[Cal. Lab. Code § 1198.5]**

10 **(By PLAINTIFF Against All DEFENDANTS)**

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

13 127. Subsequent to PLAINTIFF’S termination, on December 21, 2021, PLAINTIFF
14 caused written requests via certified mail to be delivered to DEFENDANTS for PLAINTIFF’S
15 personnel and employment records, including but not limited to (1) payroll records; (2)
16 employment contracts; (3) itemized pay stubs; and (4) PLAINTIFF’S complete employment file.

17 128. DEFENDANTS failed to provide and/or make available to PLAINTIFF her
18 personnel records, payroll records, employment contracts, and entire employment file within (30)
19 days of his request stated above. In fact, as of the date of filing of this complaint, DEFENDANTS
20 have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.

21 129. DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and
22 provide PLAINTIFF with his employment file. Section 1198.5 states that employees (and former
23 employees) have the right to inspect personnel records maintained by the employer “related to the
24 employee’s performance or to any grievance concerning the employee.” Employers must allow
25 inspection or copying within thirty (30) days of the request. PLAINTIFF requested his
26 employment file via certified mail and DEFENDANTS failed to respond. As a result, PLAINTIFF
27 is now entitled to and requests injunctive relief to obtain compliance with Cal. Lab. Code Section
28 1198.5, a statutory penalty, and an award of attorneys’ fees and costs for bringing this action.

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

2. On behalf of the CALIFORNIA CLASS:

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

violation of Cal. Lab. Code § 226

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 4, 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 4, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

Leilani Edmonds

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Friday, March 4, 2022 10:46 AM
To: Tesla Stone
Subject: Thank you for submission of your PAGA Case.

3/4/2022

LWDA Case No. LWDA-CM-871521-22
Law Firm : JCL Law Firm, APC
Plaintiff Name : MARVIN GLENN HOLLOWAY
Employer: WATER DAMAGE RESCUE, INC.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm