

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

BOEING AEROSPACE OPERATIONS, INC., a Delaware Corporation;
THE BOEING COMPANY, a Delaware Corporation; and DOES 1-50,
Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

NICHOLAS KALUZA, an individual, on behalf of himself, and on behalf
of all other aggrieved employees,

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

02/07/2022 at 01:47:23 PM

Clerk of the Superior Court
By Vanessa Sezenol, Deputy Clerk

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):

San Diego Superior Courthouse

330 W Broadway

San Diego, CA 92101

CASE NUMBER: 37-2022-00004879-CU-OE-CTL
(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 Tel: (619) 255-9047 Fax: (858) 404-9203

Zakay Law Group, APLC- 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 02/08/2022

(Fecha)

Clerk, by

(Secretario)

Vanessa Sezenol
V. Sezenol

, 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):

[SEAL]



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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

NICHOLAS KALUZA, an individual, on
behalf of himself, and on behalf of all other
aggrieved employees,

Plaintiff,

v.

BOEING AEROSPACE OPERATIONS, INC.,
a Delaware Corporation; THE BOEING
COMPANY, a Delaware Corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No: 37-2022-00004879-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SECTIONS 2698, et
seq.

DEMAND FOR A JURY TRIAL

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/07/2022 at 01:47:23 PM
Clerk of the Superior Court
By Vanessa Sezenol, Deputy Clerk

1 Plaintiff NICHOLAS KALUZA (“PLAINTIFF”), on behalf of the people of the State of
2 California and as “aggrieved employees” acting as a private attorney general under the Labor Code
3 Private Attorney General Action of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information
4 and belief, except for his own acts and knowledge which are based on personal knowledge, the
5 following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against BOEING AEROSPACE OPERATIONS,
8 INC. and THE BOEING COMPANY (“DEFENDANTS”) seeking only to recover PAGA civil
9 penalties for himself, and on behalf of all current and former aggrieved employees that worked for
10 DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations in this action, but simply the civil penalties permitted by California
14 Labor Code § 2699. Notwithstanding, PLAINTIFF is not abandoning her right to pursue his
15 individual claims for, *inter alia*, DEFENDANTS’ alleged wage violations, and/or general or
16 special damages arising from those violations, and he fully intends to, at a future date, pursue
17 claims for those individual claims and damages.

18 2. California has enacted the PAGA to permit an individual to bring an action on
19 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
20 nature of this action.

21 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANTS’
22 violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any
23 other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be
24 construed as attempting to obtain any relief that would not be available in a PAGA-only action.

25 **THE PARTIES**

26 4. Defendant BOEING AEROSPACE OPERATIONS, INC. (“Defendant Boeing
27 Aerospace”) is a Delaware corporation that at all relevant times mentioned herein conducted and
28 continues to conduct substantial and regular business in the state of California.

1 5. Defendant THE BOEING COMPANY (“Defendant Boeing Company”) is a
2 Delaware corporation that at all relevant times mentioned herein conducted and continues to
3 conduct substantial and regular business in the state of California.

4 6. Defendant Boeing Aerospace and Defendant Boeing Company were the joint
5 employers of PLAINTIFF as evidenced by the contracts signed and by the company the
6 PLAINTIFF performed work for each respectively and are therefore jointly responsible as
7 employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS”
8 and/or “DEFENDANT.”

9 7. DEFENDANTS design, manufacture and sell aircrafts and telecommunications
10 equipment in the State of California, including at the San Diego, California location where
11 PLAINTIFF worked.

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

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

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

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

12 12. PLAINTIFF was employed by DEFENDANTS in California from April of 2021 to
13 January 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid on
14 an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
15 and overtime wages due for all time worked.

16 13. PLAINTIFF, and such persons that may be added from time to time who satisfy the
17 requirements and exhaust the administrative procedures under the Private Attorney General Act,
18 bring this Representative Action on behalf of the State of California with respect to himself and all
19 individuals who are or previously were employed by DEFENDANT as non-exempt employees in
20 California (the "AGGRIEVED EMPLOYEES") during the time period of December 3, 2020 until
21 the present (the "PAGA PERIOD").

22 14. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or
23 formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action
24 pursuant to Labor Code § 2699, *et seq.* seeking penalties for DEFENDANT'S violation of
25 California Labor Code §§ 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1102.5, 1194, 1197,
26 1197.1, 1198 1198.5 & 2802, and the applicable Wage Order. Based upon the foregoing,
27 PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of
28 Labor Code § 2699, *et seq.*

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1 **A. Meal Period Violations**

2 18. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
3 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning
4 the time during which an employee is subject to the control of an employer, including all the time
5 the employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD,
6 DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying
7 them for all the time they were under DEFENDANTS' control. Specifically, as a result of
8 PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing, DEFENDANTS
9 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-
10 duty meal break. PLAINTIFF was from time to time interrupted by work assignments while
11 clocked out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were many
12 days where PLAINTIFF did not even receive a partial lunch. More specifically, from time to time,
13 PLAINTIFF and other AGGRIEVED EMPLOYEES were required by DEFENDANTS to work
14 through their meal breaks in order to meet DEFENDANTS' prescribed labor hours to perform all
15 the tasks required of them by DEFENDANTS. PLAINTIFF and other AGGRIEVED
16 EMPLOYEES were required to perform tasks such as, including but not limited to, working flight
17 lines, fixing aircrafts or assisting DEFENDANTS' supervisors with various aircraft-related tasks.
18 Additionally, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to perform as
19 much work as possible and as quickly as possible in order to meet DEFENDANTS' strict
20 performance and production requirements. As a result, the PLAINTIFF and other AGGRIEVED
21 EMPLOYEES forfeited minimum wage and overtime wages by regularly working without their
22 time being accurately recorded and without compensation at the applicable minimum wage and
23 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
24 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANTS' business
25 records.

26 19. From time-to-time during the PAGA PERIOD, as a result of their rigorous work
27 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
28 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off-duty

1 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
2 AGGRIEVED EMPLOYEES were required from time to time to perform work as ordered by
3 DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break.
4 Further, DEFENDANTS from time to time failed to provide PLAINTIFF and AGGRIEVED
5 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
6 were required by DEFENDANTS to work ten (10) hours of work from time to time. The nature of
7 the work performed by PLAINTIFF and other AGGRIEVED EMPLOYEES does not qualify for
8 limited and narrowly construed “on-duty” meal period exception. When they were provided with
9 meal periods, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time,
10 required to remain on duty and on call. PLAINTIFF and other AGGRIEVED EMPLOYEES
11 therefore forfeited meal breaks without additional compensation and in accordance with
12 DEFENDANTS’ strict corporate policy and practice.

13 **B. Rest Period Violations**

14 20. From time-to-time during the PAGA PERIOD, PLAINTIFF and other
15 AGGRIEVED EMPLOYEES were also required from time to time to work in excess of four (4)
16 hours without being provided ten (10) minute rest periods as a result of their rigorous work
17 requirements and DEFENDANTS’ inadequate staffing. More specifically, from time to time,
18 PLAINTIFF and other AGGRIEVED EMPLOYEES were required by DEFENDANTS to work
19 through their rest breaks in order to meet DEFENDANTS’ prescribed labor hours to perform all the
20 tasks required of them by DEFENDANTS. PLAINTIFF and other AGGRIEVED EMPLOYEES
21 were required to perform tasks such as, including but not limited to, working flight lines, fixing
22 aircrafts or assisting DEFENDANTS’ supervisors with various aircraft-related tasks. Additionally,
23 PLAINTIFF and other AGGRIEVED EMPLOYEES were required to perform as much work as
24 possible and as quickly as possible in order to meet DEFENDANTS’ strict performance and
25 production requirements. Further, for the same reasons these employees were denied their first rest
26 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from
27 time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
28 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at

1 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When
2 they were provided with rest breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES were,
3 from time to time, required to remain on duty and/or on call. PLAINTIFF and other AGGRIEVED
4 EMPLOYEES were also not provided with one-hour wages *in lieu* thereof. As a result of their
5 rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other
6 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
7 DEFENDANTS and DEFENDANTS' managers.

8 **C. Unlawful Rounding Violations**

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

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

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

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

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

25. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES' compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly basis with bonus compensation when the employees met the various performance goals set by DEFENDANTS.

26. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. Management and supervisors described the incentive/bonus program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be

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

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

22 **E. Unreimbursed Business Expenses**

23 28. DEFENDANTS as a matter of corporate policy, practice, and procedure,
24 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and
25 the AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFF and
26 other AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of
27 DEFENDANTS. Under California Labor Code Section 2802, employers are required to indemnify
28 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code §

1 2802 expressly states that “an employer shall indemnify his or her employee for all necessary
2 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
3 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless
4 the employee, at the time of obeying the directions, believed them to be unlawful.”

5 29. In the course of their employment, DEFENDANTS required PLAINTIFF and other
6 AGGRIEVED EMPLOYEES to use their personal cell phones as a result of and in furtherance of
7 their job duties as employees for DEFENDANT. But for the use of their own personal cell phones,
8 PLAINTIFF and the AGGRIEVED EMPLOYEES could not complete their essential job duties,
9 including but not limited to, sending and receiving work-related communications from
10 DEFENDANTS. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other
11 AGGRIEVED EMPLOYEES for their use of their personal cell phones. As a result, in the course
12 of their employment with DEFENDANTS, the PLAINTIFF and other AGGRIEVED
13 EMPLOYEES incurred unreimbursed business expenses, but were not limited to, costs related to
14 the use of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

15 **F. Wage Statement Violations**

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

24 31. From time to time during the PAGA PERIOD, when PLAINTIFF and other
25 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal
26 and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to
27 provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage
28 statements which failed to show, among other things, the total hours worked and all applicable

1 hourly rates in effect during the pay period and the corresponding amount of time worked at each
2 hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods. Further,
3 from time to time, DEFENDANTS included Paid Time Off (“PTO”) and Holiday hours into the
4 computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2), notwithstanding the
5 fact that PTO and Holiday hours are not considered hours worked. DEFENDANTS’ inclusion of
6 PTO and Holiday hours into the total hours worked in itemized wage statements issued to
7 PLAINTIFF and other AGGRIEVED EMPLOYEES violates Cal. Lab. Code § 226(a)(2).

8 32. In addition to the violations described above, DEFENDANTS, from time to time,
9 failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that
10 comply with Cal. Lab. Code § 226.

11 33. As a result, DEFENDANTS issued PLAINTIFF and the other AGGRIEVED
12 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS’
13 violations are knowing and intentional, were not isolated or due to an unintentional payroll error
14 due to clerical or inadvertent mistake.

15 **G. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

16 34. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
17 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
18 meaning the time during which an employee is subject to the control of an employer, including all
19 the time the employee is suffered or permitted to work. From time to time, DEFENDANTS required
20 PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they
21 were under DEFENDANTS’ control. Specifically, PLAINTIFF performed work before and after
22 the beginning of his shift, spending time under the DEFENDANTS’ control for which he was not
23 compensated. More specifically, from time to time, PLAINTIFF and other AGGRIEVED
24 EMPLOYEES were required by DEFENDANTS to perform work before and after the beginning
25 of their shifts in order to meet DEFENDANTS’ prescribed labor hours to perform all the tasks
26 required of them by DEFENDANTS. Additionally, since DEFENDANTS required PLAINTIFF
27 and other AGGRIEVED EMPLOYEES to perform as much work as possible and as quickly as
28 possible in order to meet DEFENDANTS’ strict performance and production requirements,

1 PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time, required to work off-
2 the-clock before and after their shifts in order to meet DEFENDANTS' strict requirements.

3 35. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
4 minimum wage and overtime compensation by regularly working without their time being
5 accurately recorded and without compensation at the applicable minimum wage and overtime rates.
6 DEFENDANTS failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES necessary
7 wages for attending for performing work at DEFENDANTS' direction, request and benefit, while
8 off-the clock. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
9 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANTS' business
10 records.

11 36. DEFENDANTS directed and directly benefited from the uncompensated off-the-
12 clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

13 37. DEFENDANTS controlled the work schedules, duties, protocols, applications,
14 assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED
15 EMPLOYEES.

16 38. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
17 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track,
18 or pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed for all
19 the work they performed, including pre-shift, post shift and during meal period off-the-clock work.

20 39. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt
21 employees, subject to the requirements of the California Labor Code.

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

27 41. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.

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

FIRST CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

[Cal. Lab. Code §§ 2698 et seq.]

(Alleged by PLAINTIFF against all Defendants)

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

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

45. 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 herself and all individuals who are or previously were employed by DEFENDANT as non-exempt employees in California during the time period of December 3, 2020 until the present (the "AGGRIEVED EMPLOYEES").

46. On December 3, 2021, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific

1 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
2 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period
3 for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
4 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
5 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
6 EMPLOYEES as herein defined.

7 47. The policies, acts and practices heretofore described were and are an unlawful
8 business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED
9 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other
10 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to pay PLAINTIFF
11 and the other AGGRIEVED EMPLOYEES for all time worked, (d) failed to compensate
12 PLAINTIFF and other AGGRIEVED EMPLOYEES for off-the-clock work, (e) failed to
13 compensate PLAINTIFF and other AGGRIEVED EMPLOYEES meal rest premiums at the regular
14 rate, (f) failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for business
15 expenses, and (e) failed to provide accurate itemized wage statements, all in violation of the
16 applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor
17 Code §§ 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1102.5, 1194, 1197, 1197.1, 1198 1198.5
18 & 2802, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties
19 as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by
20 the Labor Code Private Attorney General Act of 2004 as the representative of the State of California
21 for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

22 48. Some or all of the conduct and violations alleged herein occurred during the PAGA
23 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
24 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
25 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
26 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
27 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor
28 Code violation committed by an employer—to pursue penalties for all the Labor Code violations

1 committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

2 **PRAYER FOR RELIEF**

3 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly
4 and severally, as follows:

5
6 1. On behalf of the State of California and with respect to all AGGRIEVED
7 EMPLOYEES:

8 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
9 General Act of 2004; and

10 b. An award of penalties, attorneys’ fees and costs of suit, as allowable under the law.

11
12 DATED: February 7, 2022

13 **ZAKAY LAW GROUP, APLC**

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

17 **DEMAND FOR A JURY TRIAL**

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

19 DATED: February 7, 2022

20 **ZAKAY LAW GROUP, APLC**

21 By: 
22 Shani O. Zakay
23 Attorney for PLAINTIFF

EXHIBIT 1



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Jean-Claude Lapuyade, Esq.
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December 3, 2021

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

BOEING AEROSPACE OPERATIONS, INC.

c/o CSC- Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Via Certified Mail with Return Receipt No. 7021 0350 0000 8465 3400

THE BOEING COMPANY

c/o CSC- Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Via Certified Mail with Return Receipt No. 7021 0350 0000 8465 3417

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, 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 NICHOLAS KALUZA ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendants BOEING AEROSPACE OPERATIONS, INC. ("Defendant Boeing Aerospace"), and THE BOEING COMPANY ("Defendant Boeing Company") (collectively, "Defendants"). Plaintiff has been employed by Defendants in California since April of 2021 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants 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, 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 Boeing Aerospace and/or Defendant Boeing Company in California during the relevant claim period.

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

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

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

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



Jean-Claude Lapuyade, Esq.

Enclosure (1)

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

NICHOLAS KALUZA, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

BOEING AEROSPACE OPERATIONS, INC.,
a Delaware Corporation; THE BOEING
COMPANY, a Delaware 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) RETALIATION IN VIOLATION OF CAL.
LAB. CODE § 1102.5;
10) VIOLATION OF GOVT. CODE § 12940
– RACIAL DISCRIMINATION

DEMAND FOR A JURY TRIAL

Plaintiff NICHOLAS KALUZA (“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 BOEING AEROSPACE OPERATIONS, INC. (“Defendant Boeing Aerospace”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. Defendant THE BOEING COMPANY (“Defendant Boeing Company”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

3. Defendant Boeing Aerospace and Defendant Boeing Company were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

4. DEFENDANTS design, manufacture and sell aircrafts and telecommunications equipment in the State of California, including at the San Diego, California location where PLAINTIFF worked.

5. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently

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

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

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

23 8. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
24 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
25 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
26 employee a wage less than the minimum fixed by California state law, and as such, are subject to
27 civil penalties for each underpaid employee
28

1 9. PLAINTIFF has been employed by DEFENDANTS in California since April of
2 2021 and has at all times been classified by DEFENDANT as a non-exempt employee, paid on
3 an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
4 and overtime wages due for all time worked.

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

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

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

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

1 injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and
2 equitable relief.

3 **JURISDICTION AND VENUE**

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

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

13 **THE CONDUCT**

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

1 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
2 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

3 **A. Meal Period Violations**

4 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
5 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
6 meaning the time during which an employee is subject to the control of an employer, including
7 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
8 PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work
9 without paying them for all the time they were under DEFENDANTS' control. Specifically, as a
10 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
11 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
12 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work
13 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.
14 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. More
15 specifically, from time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
16 required by DEFENDANTS to work through their meal breaks in order to meet DEFENDANTS'
17 prescribed labor hours to perform all the tasks required of them by DEFENDANTS. PLAINTIFF
18 and other CALIFORNIA CLASS Members were required to perform tasks such as, including but
19 not limited to, working flight lines, fixing aircrafts or assisting DEFENDANTS' supervisors with
20 various aircraft-related tasks. Additionally, PLAINTIFF and other CALIFORNIA CLASS
21 Members were required to perform as much work as possible and as quickly as possible in order
22 to meet DEFENDANTS' strict performance and production requirements. As a result, the
23 PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime
24 wages by regularly working without their time being accurately recorded and without
25 compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform
26 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
27 time worked is evidenced by DEFENDANTS' business records.

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

16 **B. Rest Period Violations**

17 19. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
18 CALIFORNIA CLASS members were also required from time to time to work in excess of four
19 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
20 requirements and DEFENDANTS' inadequate staffing. More specifically, from time to time,
21 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to
22 work through their rest breaks in order to meet DEFENDANTS' prescribed labor hours to perform
23 all the tasks required of them by DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS
24 Members were required to perform tasks such as, including but not limited to, working flight
25 lines, fixing aircrafts or assisting DEFENDANTS' supervisors with various aircraft-related tasks.
26 Additionally, PLAINTIFF and other CALIFORNIA CLASS Members were required to perform
27 as much work as possible and as quickly as possible in order to meet DEFENDANTS' strict
28 performance and production requirements. Further, for the same reasons these employees were

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

11 **C. Unlawful Rounding Violations**

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

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

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

5 **D. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
6 **Sick Pay**

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

16 23. State law provides that employees must be paid overtime at one-and-one-half times
17 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS members were
18 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
19 employee’s performance.

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

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

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

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

27 **E. Unreimbursed Business Expenses**
28

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

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

23 **F. Wage Statement Violations**

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

1 employee identification number other than a social security number, (8) the name and address of
2 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
3 period and the corresponding number of hours worked at each hourly rate by the employee.

4 30. From time to time during the CLASS PERIOD, when PLAINTIFF and other
5 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
6 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
7 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
8 wage statements which failed to show, among other things, the total hours worked and all
9 applicable hourly rates in effect during the pay period and the corresponding amount of time
10 worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest
11 periods. Further, from time to time, DEFENDANTS included Paid Time Off (“PTO”) and
12 Holiday hours into the computation of total hours worked for purposes of Cal. Lab. Code §
13 226(a)(2), notwithstanding the fact that PTO and Holiday hours are not considered hours worked.
14 DEFENDANTS’ inclusion of PTO and Holiday hours into the total hours worked in itemized
15 wage statements issued to PLAINTIFF and other CALIFORNIA CLASS Members violates Cal.
16 Lab. Code § 226(a)(2).

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

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

24 **G. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

25 33. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
26 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
27 meaning the time during which an employee is subject to the control of an employer, including all
28 the time the employee is suffered or permitted to work. From time to time, DEFENDANTS required

1 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
2 they were under DEFENDANTS' control. Specifically, PLAINTIFF performed work before and
3 after the beginning of his shift, spending time under the DEFENDANTS' control for which he was
4 not compensated. More specifically, from time to time, PLAINTIFF and other CALIFORNIA
5 CLASS Members were required by DEFENDANTS to perform work before and after the beginning
6 of their shifts in order to meet DEFENDANTS' prescribed labor hours to perform all the tasks
7 required of them by DEFENDANTS. Additionally, since DEFENDANTS required PLAINTIFF
8 and other CALIFORNIA CLASS Members to perform as much work as possible and as quickly as
9 possible in order to meet DEFENDANTS' strict performance and production requirements,
10 PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to work
11 off-the-clock before and after their shifts in order to meet DEFENDANTS' strict requirements.

12 34. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
13 minimum wage and overtime compensation by regularly working without their time being
14 accurately recorded and without compensation at the applicable minimum wage and overtime rates.
15 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS
16 necessary wages for attending for performing work at DEFENDANTS' direction, request and
17 benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF
18 and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS'
19 business records.

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

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

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

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

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

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

12 41. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
13 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
14 for the time spent opening the jewelry store while off-the-clock. DEFENDANTS' uniform policy
15 and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
16 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
17 records.

18 **H. Plaintiff's Individual Claims**

19 42. PLAINTIFF has been employed by DEFENDANTS in California since April of
20 2021.

21 43. Throughout his employment with DEFENDANTS, PLAINTIFF was treated
22 differently and unfairly by DEFENDANTS and its agents, all in retaliation against PLAINTIFF
23 for various protected activities.

24 44. In or around July through September of 2021, PLAINTIFF complained to
25 DEFENDANTS about DEFENDANTS' unlawful wage-and-hour practices, including but not
26 limited to, DEFENDANTS' failure to provide legally-required meal and rest breaks and failure
27 to pay for all hours worked. PLAINTIFF reported the unlawful conduct to DEFENDANTS, but
28 PLAINTIFF'S report fell on deaf ears.

1 45. Shortly thereafter, in or around October of 2021, in response to PLAINTIFF's
2 complaints to DEFENDANTS, DEFENDANTS placed PLAINTIFF on an unpaid suspension.

3 46. Further, PLAINTIFF is informed and believes, and upon such information and
4 belief alleges, that, during PLAINTIFF's employment with DEFENDANTS and at the time of his
5 unpaid suspension, PLAINTIFF was treated differently and unfairly by DEFENDANTS and its
6 agents, all in discrimination against PLAINTIFF because of his race. PLAINTIFF is mixed race
7 African-American and white. PLAINTIFF never felt that he was accepted by DEFENDANTS
8 because of his race.

9 47. PLAINTIFF is informed and believes, and upon such information and belief
10 alleges, that, during PLAINTIFF's employment with DEFENDANTS and at the time of his
11 unpaid suspension DEFENDANTS hired and treated its non-mixed-race employees far better than
12 DEFENDANTS treated PLAINTIFF, and solely on the basis that PLAINTIFF is mixed race
13 African-American and white.

14 48. Specifically, in or around July of 2021, DEFENDANTS began to institute a series
15 of discriminatory acts against PLAINTIFF. For example, PLAINTIFF'S team lead, Tyler Blythe,
16 reprimanded PLAINTIFF for taking legally-entitled meal and rest breaks and refusing to work
17 off-the-clock without compensation. PLAINTIFF is informed and believes, and upon such
18 information and belief, alleges that, DEFENDANTS' adverse employment actions against
19 PLAINTIFF were made to PLAINTIFF on the basis that PLAINTIFF is mixed race African-
20 American and white. Following the foregoing series of incidents, and following the reporting of
21 DEFENDANTS' unlawful labor practices, DEFENDANTS placed PLAINTIFF on an unpaid
22 suspension.

23 49. PLAINTIFF is informed and believes, and upon such information and belief
24 alleges, that, DEFENDANTS' conduct in placing PLAINTIFF on an unpaid suspension was part
25 of a pattern of behavior by DEFENDANTS aimed at removing African-American employees like
26 PLAINTIFF from DEFENDANTS' workforce.

27 50. PLAINTIFF filed a complaint with the California Department of Fair Employment
28 and Housing and received a "right to sue" letter on _____, thereby exhausting his

administrative remedies.

I. CLASS ACTION ALLEGATIONS

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

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

53. The members of the class are so numerous that joinder of all class members is impractical.

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

- i. Whether DEFENDANTS maintained legally compliant meal period policies and practices;
- ii. Whether DEFENDANTS maintained legally compliant rest period policies and practices;

- iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;
- iv. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- v. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- vi. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- vii. Whether DEFENDANTS issued legally compliant wage statements;
- viii. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- ix. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- x. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

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

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

1 59. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
2 interests of the other CALIFORNIA CLASS Members.

3 60. There is a strong community of interest among PLAINTIFF and the members of
4 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
5 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
6 sustained.

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

5 64. 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 65. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

21 67. By the conduct alleged herein, DEFENDANT has engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
25 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
26 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
27 constitute unfair competition, including restitution of wages wrongfully withheld.

28 68. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair
in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous
or substantially injurious to employees, and were without valid justification or utility for which

1 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
2 Business & Professions Code, including restitution of wages wrongfully withheld.

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

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

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

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

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

26 74. By and through the unlawful and unfair business practices described herein,
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
28 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and

1 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
2 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
3 to unfairly compete against competitors who comply with the law.

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

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

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

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

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

7 87. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
9 minimum wage compensation for their time worked for DEFENDANT.

10 88. During the CLASS PERIOD, PLAINTIFF and the other members of the
11 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
12 failure to pay all earned wages.

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

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

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

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

23 94. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
24 for DEFENDANT's willful and intentional violations of the California Labor Code and the
25 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
26 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
27 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.
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1 95. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
2 public policy, an employer must timely pay its employees for all hours worked.

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

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

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

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

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

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

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

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

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

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

26 106. DEFENDANTS knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
28 DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
2 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
3 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

113. 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.

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

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

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

SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code §§ 226)

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

117. 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.

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

- i. Gross wages earned,
- ii. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- iii. the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- iv. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- v. net wages earned,
- vi. the inclusive dates of the period for which the employee is paid,
- vii. 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,
- viii. the name and address of the legal entity that is the employer, and

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

119. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods. Further, from time to time, DEFENDANTS included Paid Time Off (“PTO”) and Holiday hours into the computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2), notwithstanding the fact that PTO and Holiday hours are not considered hours worked. DEFENDANTS’ inclusion of PTO and Holiday hours into the total hours worked in itemized wage statements issued to PLAINTIFF and other CALIFORNIA CLASS Members violates Cal. Lab. Code § 226(a)(2). As such, the wage statements issued to PLAINTIFF and members of the CALIFORNIA CLASS violated Cal. Lab. Code § 226(a)(2). In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

120. 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

1 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
2 of the CALIFORNIA CLASS herein).

3 **SEVENTH CAUSE OF ACTION**

4 **Failure To Pay Wages When Due**

5 **(Cal. Lab. Code §§ 203)**

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

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

10 122. Cal. Lab. Code § 200 provides that:

11 As used in this article:

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

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

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

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

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

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

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

5 126. Cal. Lab. Code § 203 provides:

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

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

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

20 **EIGHTH CAUSE OF ACTION**

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

22 **(Cal. Lab. Code §§ 2802)**

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

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

27 130. Cal. Lab. Code § 2802 provides, in relevant part, that:
28

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

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

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

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1 **TENTH CAUSE OF ACTION**

2 **(VIOLATION OF GOVT. CODE § 12940 – RACIAL DISCRIMINATION)**

3 **(Alleged By PLAINTIFF and against all Defendants)**

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

6 141. PLAINTIFF was employed by DEFENDANTS.

7 142. DEFENDANTS are employers covered by Government Code §12940 *et seq.*

8 143. PLAINTIFF was placed on an unpaid suspension and/or suffered other adverse
9 employment actions.

10 144. PLAINTIFF's race was a substantial motivating reason(s) for his termination and
11 other adverse employment actions.

12 145. As a result of DEFENDANTS' conduct, PLAINTIFF has suffered substantial losses
13 in earnings and employment benefits and emotional distress in an amount to be determined
14 according to proof at trial.

15 146. In doing the acts herein alleged, DEFENDANTS acted with malice and oppression,
16 and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is entitled to exemplary
17 and punitive damages from DEFENDANTS in an amount to be punish DEFENDANTS and to deter
18 such wrongful conduct in the future.

19 147. On _____, PLAINTIFF filed a complaint with the Department of Fair
20 Employment & Housing ("DFEH"), and received an immediate Right to Sue that same day. (See
21 Exhibit #1).

22 **PRAYER FOR RELIEF**

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

25 1. On behalf of the CALIFORNIA CLASS:

26 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
27 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

28 b. An order temporarily, preliminarily and permanently enjoining and restraining

1 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

2 c. An order requiring DEFENDANT to pay all overtime wages and all sums
3 unlawfully withheld from compensation due to PLAINTIFF and the other members
4 of the CALIFORNIA CLASS; and

5 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
6 for restitution of the sums incidental to DEFENDANT's violations due to
7 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

8 2. On behalf of the CALIFORNIA CLASS:

9 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
10 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
11 to Cal. Code of Civ. Proc. § 382;

12 b. Compensatory damages, according to proof at trial, including compensatory
13 damages for overtime compensation and separately owed rest periods, due to
14 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
15 applicable CLASS PERIOD plus interest thereon at the statutory rate;

16 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
17 the applicable IWC Wage Order;

18 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
19 which a violation occurs and one hundred dollars (\$100) per each member of the
20 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
21 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
22 violation of Cal. Lab. Code § 226

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

26 3. On Plaintiff's Ninth and Tenth Causes of Action

27 a. For all special damages which were sustained as a result of DEFENDANTS'
28 conduct, including but not limited to, back pay, front pay, lost compensation and

1 job benefits that PLAINTIFF would have received but for the practices of
2 DEFENDANTS;

3 b. For all exemplary damages, according to proof, which were sustained as a result of
4 DEFENDANTS' conduct;

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

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

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

8 4. On all claims:

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

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

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

12
13 DATED: December __, 2021

14 **ZAKAY LAW GROUP, APLC**

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

18 **DEMAND FOR A JURY TRIAL**

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

20
21 DATED: December __, 2021

22 **ZAKAY LAW GROUP, APLC**

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

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Boeing Aerospace Operations, Inc.
c/o CSC - Ludwig's Incorp. Services
2710 Gateway Oaks Pl. St. 150N
Sacramento, CA 95833



9590 9402 7020 1225 2855 49

2. Article Number (Transfer from service label)

7021 0350 0000 8465 3400

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X F.K.

- ☐ Agent
☐ Address

B. Received by

C. Date of Delivery

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

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1. Article Addressed to:

The Boeing company
c/o CSC Lawyers Incorp. Services
2710 Gateway Oaks Dr. St. Bon
Sacramento, CA 95833



9590 9402 7020 1225 2855 32

2. Article Number (Transfer from service label)

7021 0350 0000 8465 3417

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

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☐ Agent☐ Addressee

B. Received by (Printed Name)

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D. Is delivery address different from item 1? ☐ Yes
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KALUZA PUGA 123321

3. Service type

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| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
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