

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

PENINSULA CUSTOM HOMES, INC., a California Corporation; and
DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

RICARDO COLIN COVARRUBIAS, an individual(s), on behalf of
himself and on behalf of all persons similarly situated,

Electronically
FILED

by Superior Court of California, County of San Mateo

ON 7/5/2022

By /s/ Una Finau
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 Mateo Superior Court
400 County Center
Redwood City, CA 94063

CASE NUMBER: 22-CIV-02733
(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

/s/ Unaloto Finau

DATE: 7/5/2022
(Fecha)

Neal I. Taniguchi

Clerk, by _____, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):

[SEAL]



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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

RICARDO COLIN COVARRUBIAS, an
individual(s), on behalf of himself and on behalf
of all persons similarly situated,

Plaintiff,

v.

PENINSULA CUSTOM HOMES, INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. ²²-CIV-02733

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) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

Plaintiff RICARDO COLIN COVARRUBIAS (“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 PENINSULA CUSTOM HOMES, INC. (“DEFENDANT”) is a
California corporation that at all relevant times mentioned herein conducted and continues to
conduct substantial and regular business in the state of California, county of San Mateo, owns,
operates, and/or manages a residential construction business.

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

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

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

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

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

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

1 8. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
3 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
4 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
5 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
6 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
7 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
8 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
9 other members of the CALIFORNIA CLASS who have been economically injured by
10 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
11 relief.

12 9. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
13 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain
14 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

20 **JURISDICTION AND VENUE**

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

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

THE CONDUCT

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

A. Meal Period Violations

14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's demanding work requirements, performing carpentry and construction

1 work, and DEFENDANT’S understaffing, DEFENDANTS required PLAINTIFF to work while
2 clocked out during what was supposed to be PLAINTIFF’s off-duty meal break. PLAINTIFF
3 was from time to time interrupted by work assignments while clocked out for what should have
4 been PLAINTIFF’s off-duty meal break. Indeed, there were many days where PLAINTIFF did
5 not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
6 Members forfeited minimum wage and overtime wages by regularly working without their time
7 being accurately recorded and without compensation at the applicable minimum wage and
8 overtime rates. DEFENDANTS’ uniform policy and practice not to pay PLAINTIFF and other
9 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS’ business
10 records.

11 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
12 requirements, performing carpentry and construction work, and DEFENDANTS’ inadequate
13 staffing practices, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
14 time unable to take thirty (30) minute off-duty meal breaks and were not fully relieved of duty for
15 their meal periods. PLAINTIFF and other CALIFORNIA CLASS Members were required from
16 time to time to perform work as ordered by DEFENDANTS for more than five (5) hours during
17 some shifts without receiving a meal break. Further, DEFENDANTS from time to time failed to
18 provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period
19 for some workdays in which these employees were required by DEFENDANTS to work ten (10)
20 hours of work from time to time. The nature of the work performed by PLAINTIFF and other
21 CALIFORNIA CLASS Members does not qualify for limited and narrowly construed “on-duty”
22 meal period exception. When they were provided with meal periods, PLAINTIFF and other
23 CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call.
24 PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks without
25 additional compensation and in accordance with DEFENDANTS’ strict corporate policy and
26 practice.

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1 **B. Rest Period Violations**

2 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
3 CALIFORNIA CLASS members were also required from time to time to work in excess of four
4 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
5 requirements, performing carpentry and construction work, and DEFENDANTS' inadequate
6 staffing. Further, for the same reasons these employees were denied their first rest periods of at
7 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
8 time, a first and second rest period of at least ten (10) minutes for some shifts worked of between
9 six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
10 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they
11 were provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were,
12 from time to time, required to remain on duty and/or on call. PLAINTIFF and other
13 CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As
14 a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF
15 and other CALIFORNIA CLASS Members were from time to time denied their proper rest
16 periods by DEFENDANTS and DEFENDANTS' managers.

17 **C. Regular Rate Violation – Overtime, Sick Pay and Meal and Rest Period Premiums**

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

27 18. State law provides that employees must be paid overtime at one-and-one half times
28 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were

1 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
2 employee's performance.

3 19. The second component of PLAINTIFF's and other CALIFORNIA CLASS
4 Member's compensation was DEFENDANTS' non-discretionary incentive program that paid
5 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
6 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
7 paid on an hourly basis with bonus, and/or commission compensation when the employees met
8 the various performance goals set by DEFENDANTS.

9 20. However, from-time-to-time, when calculating the regular rate of pay, in those pay
10 periods where PLAINTIFF and the CALIFORNIA CLASS Members worked overtime and
11 earned this non-discretionary bonus, commission, or incentive DEFENDANTS failed to
12 accurately include the non-discretionary bonus compensation and/or commission and/or incentive
13 paid as part of the employees' "regular rate of pay" and/or calculated all hours worked rather than
14 just all non-overtime hours worked. Further, when calculating the regular rate of pay in order to
15 pay sick pay to PLAINTIFF and the CALIFORNIA CLASS, DEFENDANTS failed to include
16 the incentive compensation as part of the employees' "regular rate of pay" for purposes of
17 calculating sick pay. Management and supervisors described the incentive/bonus program to
18 potential and new employees as part of the compensation package. As a matter of law, the
19 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members
20 must be included in the "regular rate of pay." The failure to do so has resulted in a systematic
21 underpayment of overtime and/or sick pay compensation to PLAINTIFF and other CALIFORNIA
22 CLASS Members by DEFENDANTS.

23 21. As a matter of law, the incentive and commission compensation received by
24 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly
25 calculated into the "regular rate of pay" for purposes of overtime compensation, meal and rest
26 period premiums, and sick pay. DEFENDANTS' failure to do so has resulted in DEFENDANTS'
27 systematic underpayment of overtime compensation, meal and rest period premiums, and sick pay
28 to PLAINTIFF and other CALIFORNIA CLASS members. Specifically, California Labor Code

1 Section 246 mandates that paid sick time for non-employees shall be calculated in the same
2 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid
3 sick time, whether or not the employee actually works overtime in that workweek.
4 DEFENDANT'S conduct, as articulated herein, by failing to include the incentive compensation
5 as part of the "regular rate of pay" for purposes of sick pay compensation was in violation of Cal.
6 Lab. Code § 246.

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

17 **D. Unreimbursed Business Expenses**

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

1 24. In the course of their employment, DEFENDANTS required PLAINTIFF and
2 other CALIFORNIA CLASS Members to use their personal cell phone and personal vehicle as a
3 result of and in furtherance of their job duties as employees for DEFENDANT. But for the use of
4 their own personal cell phones and vehicles, PLAINTIFF and the CALIFORNIA CLASS
5 Members could not complete their essential job duties. For example, PLAINTIFF and other
6 CALIFORNIA CLASS Members were required to drive their personal vehicle between jobsites
7 scheduled shifts. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other
8 CALIFORNIA CLASS Members for their use of their personal cell phones and personal vehicles.
9 As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF and other
10 CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were not limited
11 to, costs related to the use of their personal cellular phones and personal vehicles, all on behalf of
12 and for the benefit of DEFENDANT.

13 **E. Wage Statement Violations**

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

22 26. From time to time during the CLASS PERIOD, when PLAINTIFF and other
23 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
24 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
25 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
26 wage statements which failed to show, among other things, the total hours worked and all
27 applicable hourly rates in effect during the pay period and the corresponding amount of time
28

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

3 27. For instance, PLAINTIFF received compensation from DEFENDANTS in the
4 form of Visa Gift Cards. DEFENDANT violated California Labor Codes section 226 by failing
5 to list this remuneration, or the applicable hourly rate and the corresponding number of hours
6 worked at the applicable hourly rate for this remuneration. PLAINTIFF, and all those similarly
7 situated CALIFORNIA CLASS Members, suffered damage as a result of DEFENDANTS'
8 aforementioned violation because he could not promptly and easily determine from the wage
9 statement alone the applicable hourly rate and the corresponding number of hours worked at the
10 applicable hourly rate for this remuneration.

11 28. In addition to the violations described above, DEFENDANTS, from time to time,
12 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
13 that comply with Cal. Lab. Code § 226. Specifically, DEFENDANTS failed to include the correct
14 total number of hours worked on the wage statements.

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

19 **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

20 30. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
21 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
22 CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required
23 PLAINTIFF and the other members of the CALIFORNIA CLASS to perform off-the-clock pre-
24 shift and post-shift work. For instance, DEFENDANT required PLAINTIFF and the other
25 members of the CALIFORNIA CLASS, from time to time, to clock out at the end of a scheduled
26 shift but continue to work to complete a project, time for which DEFENDANT did not provide
27 compensation while off the clock. Notwithstanding, from time-to-time DEFENDANTS failed to
28

1 pay PLAINTIFF and other members of the CALIFORNIA CLASS necessary wages for attending
2 and performing work at DEFENDANTS' direction, request and benefit, while off-the clock.

3 31. During the CLASS PERIOD, from time-to-time DEFENDANTS required
4 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work,
5 including but not limited to, driving between jobsites during a scheduled shift. From time to time,
6 as a condition of employment, DEFENDANT also required PLAINTIFF and other members of
7 the CALIFORNIA CLASS to fill out and submit COVID questionnaires before a scheduled shift
8 and off the clock. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS
9 to have to work while off-the-clock.

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

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

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

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

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

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

1 38. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
2 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
3 for the time spent opening the jewelry store while off-the-clock. DEFENDANTS' uniform policy
4 and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
5 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
6 records.

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

24 **G. CLASS ACTION ALLEGATIONS**

25 40. PLAINTIFF brings the First through Eighth Causes of Action as a class action
26 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current
27 and former non-exempt California employees ("CALIFORNIA CLASS") during the period
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1 beginning four years prior to the filing of the Complaint and ending on a date determined by the
2 Court (“CLASS PERIOD”).

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

9 42. The members of the class are so numerous that joinder of all class members is
10 impractical.

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

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

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

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

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

21 46. PLAINTIFF will fairly and adequately represent and protect the interests of the
22 CALIFORNIA CLASS Members.

23 47. PLAINTIFF retained able class counsel with extensive experience in class action
24 litigation.

25 48. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
26 interests of the other CALIFORNIA CLASS Members.

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

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

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

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

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

21 52. Class treatment provides manageable judicial treatment calculated to bring an
22 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
23 the conduct of 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 53. 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 54. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

10 55. 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 56. 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 57. 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 58. 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 59. 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 60. 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 61. 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 62. 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 63. 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 64. 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 65. 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 66. 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 67. 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 75. 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 76. 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 77. 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 78. 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 79. 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 80. 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 81. 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 82. 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 83. 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 84. 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 85. 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 86. 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 87. 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 88. 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 89. 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 90. 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 91. 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 92. 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 93. 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 94. 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 95. 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 96. 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 97. 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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1 101. As a proximate result of the aforementioned violations, PLAINTIFF and
2 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
3 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

4 **FIFTH CAUSE OF ACTION**

5 **Failure To Provide Required Rest Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

11 103. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
12 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
13 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
14 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
15 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
16 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
17 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
18 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
19 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
20 DEFENDANT and DEFENDANT's managers. In addition, because of DEFENDANT's pay plan
21 for PLAINTIFF and CALIFORNIA CLASS Members (being paid a flat rate only),
22 DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA CLASS Members for their
23 rest periods as required by the applicable Wage Order and Labor Code. DEFENDANT did not
24 have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other
25 CALIFORNIA CLASS Members when they worked as non-exempt sales employees. As a result,
26 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
27 all the legally required paid rest periods is evidenced by DEFENDANT's business records.
28

104. 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.

105. 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)

106. 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.

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

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

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

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

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

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

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

5 110. 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.

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

9 As used in this article:

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

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

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

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

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

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

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

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

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

10 **EIGHTH CAUSE OF ACTION**

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

12 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

22 120. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal.
23 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
24 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
25 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
26 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
27 using their personal cellular phone and vehicles all on behalf of and for the benefit of
28 DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were
required by DEFENDANTS to use their personal cell phones to execute their essential job duties
on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to

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

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

13 **NINTH CAUSE OF ACTION**

14 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

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

16 **(Alleged by PLAINTIFF against all Defendants)**

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

19 123. PAGA is a mechanism by which the State of California itself can enforce state
20 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
21 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
22 fundamentally a law enforcement action designed to protect the public and not to benefit private
23 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
24 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
25 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
26 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
27 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.
28

1 124. PLAINTIFF, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, bring this Representative Action on behalf of the State of California with respect to
4 themselves and all individuals who are or previously were employed by DEFENDANT and
5 classified as non-exempt employees in California during the time period of November 9, 2020
6 until the present (the "AGGRIEVED EMPLOYEES").

7 125. On November 9, 2021, PLAINTIFF gave written notice by certified mail to the
8 Labor and Workforce Development Agency (the "Agency") and the employer of the
9 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3.
10 See **Exhibit #2**, attached hereto and incorporated by this reference herein. The statutory waiting
11 period for PLAINTIFF to add these allegations to the Complaint has expired. As a result,
12 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under
13 PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all
14 AGGRIEVED EMPLOYEES as herein defined.

15 126. The policies, acts and practices heretofore described were and are an unlawful
16 business act or practice because Defendant (a) failed to properly record and pay PLAINTIFF and
17 the other AGGRIEVED EMPLOYEES for all of the hours they worked, including minimum wage
18 and overtime wages in violation of the Wage Order, (b) failed to provide meal and rest breaks, (c)
19 failed to provide accurate itemized wage statements, and (d) failed to timely pay wages, all in
20 violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not
21 limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 246,
22 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, & 2804, and the
23 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of
24 such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
25 Code Private Attorney General Act of 2004 as the representative of the State of California for the
26 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

27 127. To the extent that any of the conduct and violations alleged herein did not affect
28 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that

1 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
2 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
3 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor
4 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
5 committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

6 **PRAYER FOR RELIEF**

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

9 1. On behalf of the CALIFORNIA CLASS:

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

20 2. On behalf of the CALIFORNIA CLASS:

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

1 the applicable IWC Wage Order;

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

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

10 3. On Behalf of the State of California and with respect to all AGGRIEVED
11 EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private
12 Attorneys General Act of 2004;

13 4. On all claims:

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

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

16 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
17

18 DATED: July 5, 2022

ZAKAY LAW GROUP, APLC

19
20 By: 

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22 Shani O. Zakay
23 Attorney for PLAINTIFF
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DEMAND FOR A JURY TRIAL

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

DATED: July 5, 2022

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1



5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
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Jean-Claude Lapuyade, Esq.
jlapuyade@jcl-lawfirm.com

November 9, 2021

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

PENINSULA CUSTOM HOMES, INC.

c/o Bryan Murphy
1401 Old County Rd.
San Carlos, CA 94070

Sent Via Certified Mail & Return Receipt No. 7021 0350 0000 8465 3233

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:

This office represents RICARDO COLIN COVARRUBIAS (“Plaintiff”) and other aggrieved employees in a proposed class and representative action against PENINSULA CUSTOM HOMES, INC. (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendant in California from January of 2021 to August of 2021. Plaintiff was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated 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, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

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

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

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

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

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees and Class Members

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

Very truly yours,
JCL LAW FIRM, APC

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

Jean-Claude Lapuyade, Esq.

Enclosure (1)

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar #290572)

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

RICARDO COLIN COVARRUBIAS, an
individual(s), on behalf of himself and on behalf
of all persons similarly situated,

Plaintiff,

v.

PENINSULA CUSTOM HOMES, INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE § 226;
7) FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF
CALIFORNIA LABOR CODE §2802.

DEMAND FOR A JURY TRIAL

Plaintiff RICARDO COLIN COVARRUBIAS (“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 PENINSULA CUSTOM HOMES, INC. (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of San Mateo, owns, operates, and/or manages a residential construction business.

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

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

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

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

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

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

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

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

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

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

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

16 **JURISDICTION AND VENUE**

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

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

26 **THE CONDUCT**

27 13. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a

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

18 **A. Meal Period Violations**

19 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
20 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
21 meaning the time during which an employee is subject to the control of an employer, including
22 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
23 PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work
24 without paying them for all the time they were under DEFENDANTS' control. Specifically, as a
25 result of PLAINTIFF's demanding work requirements, performing carpentry and construction
26 work, and DEFENDANT'S understaffing, DEFENDANTS required PLAINTIFF to work while
27 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
28 was from time to time interrupted by work assignments while clocked out for what should have

1 been PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did
2 not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
3 Members forfeited minimum wage and overtime wages by regularly working without their time
4 being accurately recorded and without compensation at the applicable minimum wage and
5 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
6 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
7 records.

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

24 **B. Rest Period Violations**

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

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

12 **C. Regular Rate Violation – Overtime, Sick Pay and Meal and Rest Period Premiums**

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

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

26 19. The second component of PLAINTIFF's and other CALIFORNIA CLASS
27 Member's compensation was DEFENDANTS' non-discretionary incentive program that paid
28 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their

1 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
2 paid on an hourly basis with bonus, and/or commission compensation when the employees met
3 the various performance goals set by DEFENDANTS.

4 20. However, from-time-to-time, when calculating the regular rate of pay, in those pay
5 periods where PLAINTIFF and the CALIFORNIA CLASS Members worked overtime and
6 earned this non-discretionary bonus, commission, or incentive DEFENDANTS failed to
7 accurately include the non-discretionary bonus compensation and/or commission and/or incentive
8 paid as part of the employees' "regular rate of pay" and/or calculated all hours worked rather than
9 just all non-overtime hours worked. Further, when calculating the regular rate of pay in order to
10 pay sick pay to PLAINTIFF and the CALIFORNIA CLASS, DEFENDANTS failed to include
11 the incentive compensation as part of the employees' "regular rate of pay" for purposes of
12 calculating sick pay. Management and supervisors described the incentive/bonus program to
13 potential and new employees as part of the compensation package. As a matter of law, the
14 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members
15 must be included in the "regular rate of pay." The failure to do so has resulted in a systematic
16 underpayment of overtime and/or sick pay compensation to PLAINTIFF and other CALIFORNIA
17 CLASS Members by DEFENDANTS.

18 21. As a matter of law, the incentive and commission compensation received by
19 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly
20 calculated into the "regular rate of pay" for purposes of overtime compensation, meal and rest
21 period premiums, and sick pay. DEFENDANTS' failure to do so has resulted in DEFENDANTS'
22 systematic underpayment of overtime compensation, meal and rest period premiums, and sick pay
23 to PLAINTIFF and other CALIFORNIA CLASS members. Specifically, California Labor Code
24 Section 246 mandates that paid sick time for non-employees shall be calculated in the same
25 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid
26 sick time, whether or not the employee actually works overtime in that workweek.
27 DEFENDANT'S conduct, as articulated herein, by failing to include the incentive compensation
28

1 as part of the “regular rate of pay” for purposes of sick pay compensation was in violation of Cal.
2 Lab. Code § 246.

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

13 **D. Unreimbursed Business Expenses**

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

25 24. In the course of their employment, DEFENDANTS required PLAINTIFF and
26 other CALIFORNIA CLASS Members to use their personal cell phone and personal vehicle as a
27 result of and in furtherance of their job duties as employees for DEFENDANT. But for the use of
28 their own personal cell phones and vehicles, PLAINTIFF and the CALIFORNIA CLASS

1 Members could not complete their essential job duties. For example, PLAINTIFF and other
2 CALIFORNIA CLASS Members were required to drive their personal vehicle between jobsites
3 scheduled shifts. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and other
4 CALIFORNIA CLASS Members for their use of their personal cell phones and personal vehicles.
5 As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF and other
6 CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were not limited
7 to, costs related to the use of their personal cellular phones and personal vehicles, all on behalf of
8 and for the benefit of DEFENDANT.

9 **E. Wage Statement Violations**

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

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

26 27. For instance, PLAINTIFF received compensation from DEFENDANTS in the
27 form of Visa Gift Cards. DEFENDANT violated California Labor Codes section 226 by failing
28 to list this remuneration, or the applicable hourly rate and the corresponding number of hours

1 worked at the applicable hourly rate for this renumeration. PLAINTIFF, and all those similarly
2 situated CALIFORNIA CLASS Members, suffered damage as a result of DEFENDANTS'
3 aforementioned violation because he could not promptly and easily determine from the wage
4 statement alone the applicable hourly rate and the corresponding number of hours worked at the
5 applicable hourly rate for this renumeration.

6 28. In addition to the violations described above, DEFENDANTS, from time to time,
7 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
8 that comply with Cal. Lab. Code § 226. Specifically, DEFENDANTS failed to include the correct
9 total number of hours worked on the wage statements.

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

14 **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

15 30. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
16 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
17 CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required
18 PLAINTIFF and the other members of the CALIFORNIA CLASS to perform off-the-clock pre-
19 shift and post-shift work. For instance, DEFENDANT required PLAINTIFF and the other
20 members of the CALIFORNIA CLASS, from time to time, to clock out at the end of a scheduled
21 shift but continue to work to complete a project, time for which DEFENDANT did not provide
22 compensation while off the clock. Notwithstanding, from time-to-time DEFENDANTS failed to
23 pay PLAINTIFF and other members of the CALIFORNIA CLASS necessary wages for attending
24 and performing work at DEFENDANTS' direction, request and benefit, while off-the clock.

25 31. During the CLASS PERIOD, from time-to-time DEFENDANTS required
26 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work,
27 including but not limited to, driving between jobsites during a scheduled shift. From time to time,
28 as a condition of employment, DEFENDANT also required PLAINTIFF and other members of

1 the CALIFORNIA CLASS to fill out and submit COVID questionnaires before a scheduled shift
2 and off the clock. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS
3 to have to work while off-the-clock.

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

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

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

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

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

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

23 38. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
24 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
25 for the time spent opening the jewelry store while off-the-clock. DEFENDANTS' uniform policy
26 and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
27 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
28 records.

1 **G. CLASS ACTION ALLEGATIONS**

2 39. PLAINTIFF brings the First through Eighth Causes of Action as a class action
3 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS’ current
4 and former non-exempt California employees (“CALIFORNIA CLASS”) during the period
5 beginning four years prior to the filing of the Complaint and ending on a date determined by the
6 Court (“CLASS PERIOD”).

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

13 41. The members of the class are so numerous that joinder of all class members is
14 impractical.

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

- 24 a. Whether DEFENDANTS maintained legally compliant meal period policies and
25 practices;
26 b. Whether DEFENDANTS maintained legally compliant rest period policies and
27 practices;
28

- c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;
- d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- f. Whether Defendants failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- g. Whether DEFENDANTS issued legally compliant wage statements;
- h. 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;
- i. 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;
- j. 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.

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

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

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

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

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

3 48. 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 49. 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 50. 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 a. 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 b. 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 51. 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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5 **FIRST CAUSE OF ACTION**

6 **Unlawful Business Practices**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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4 **SECOND CAUSE OF ACTION**

5 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **THIRD CAUSE OF ACTION**

19 **Failure To Pay Overtime Compensation**

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

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

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

25 82. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
26 for DEFENDANT's willful and intentional violations of the California Labor Code and the
27 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
28

1 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
2 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

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

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

1 89. 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 90. 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 91. 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 92. 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 93. 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 94. 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 95. 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 96. 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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100. 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)

101. 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.

102. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers. In addition, because of DEFENDANT's pay plan for PLAINTIFF and CALIFORNIA CLASS Members (being paid a flat rate only), DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA CLASS Members for their rest periods as required by the applicable Wage Order and Labor Code. DEFENDANT did not have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other CALIFORNIA CLASS Members when they worked as non-exempt sales employees. 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.

103. 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.

104. 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)

105. 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.

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

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

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

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

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

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

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

5 109. 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.

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

9 As used in this article:

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

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

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

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

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

114. Cal. Lab. Code § 203 provides:

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

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

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

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees For Required Expenses

(Cal. Lab. Code §§ 2802)

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

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

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

119. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using their personal cellular phone and vehicles all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to

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

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

13 **PRAYER FOR RELIEF**

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

16 1. On behalf of the CALIFORNIA CLASS:

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

27 2. On behalf of the CALIFORNIA CLASS:

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

Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

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

3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: November 9, 2021

ZAKAY LAW GROUP, APLC

By: _____



Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: November 9, 2021

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

PENNISULA CUSTOM HOMES, INC.
c/o Bryan Murphy
1701 Old County Rd.
San Carlos, CA 94070



9590 9402 6744 1060 3008 30

2. Article Number (Transfer from service label)

7021 0350 0000 8465 3233

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?
If YES, enter delivery address below:

- ☐ Yes
☐ No

Covarrubias 11.9.21 Paga

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
☐ Registered Mail™
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PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt