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Attorneys for Plaintiff LUIS DE JESUS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

LUIS DE JESUS CLAUDIO, an individual, on  
behalf of himself and on behalf of all persons  
similarly situated,

Plaintiff,

v.

UNI CARE HOME HEALTH INC., a  
California Corporation; and DOES 1-50,  
Inclusive,

Defendants.

Case No: 37-2022-00003063-CU-OE-CTL

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

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

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**03/16/2022** at 04:31:00 PM  
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By Emily Schilawski, Deputy Clerk

CODE §§ 201, 202 AND 203; and  
8) FAILURE TO REIMBURSE EMPLOYEES  
FOR REQUIRED EXPENSES IN  
VIOLATION OF CAL. LAB. CODE §  
2802;  
9) VIOLATIONS OF THE PRIVATE  
ATTORNEY GENERAL ACT  
PURSUANT TO LABOR CODE  
SECTIONS 2698, et seq.

**DEMAND FOR A JURY TRIAL**

Plaintiff LUIS DE JESUS CLAUDIO (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees, and on behalf of the people of the State of California and as “aggrieved employees” acting as a private attorney general under the Labor Code Private Attorney General Action of 2004, § 2699, *et seq.* (“PAGA”) alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

**THE PARTIES**

1. Defendant UNI CARE HOME HEALTH 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. DEFENDANT offers a full spectrum of home health care, hospice, in-home health and telehealth services.

2. PLAINTIFF was employed by DEFENDANT in California from October 2020 to February 2021 as a registered nurse, and was at all times classified by DEFENDANT as a non-exempt employee, paid on a piece-rate basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. PLAINTIFF was paid by piece-rate only while he was performing visits for DEFENDANT in accordance with DEFENDANT’s compensation package. Importantly, PLAINTIFF was not provided with minimum wages for his non-production work time. PLAINTIFF also did not receive paid rest breaks as required by California law. DEFENDANT failed to pay PLAINTIFF the correct amount of compensation because DEFENDANT established an illegal pay practice of paying PLAINTIFF on a piece rate basis when conducting visits with patients assigned by DEFENDANT. DEFENDANT however failed to pay minimum wages for compensable time

1 worked, including time spent traveling between visits, and time spent for filling out charts  
2 before/after visits. DEFENDANT also failed to pay PLAINTIFF any overtime wages for all  
3 overtime worked, thereby uniformly resulting in PLAINTIFF being underpaid for all time  
4 worked during his employment, including overtime worked. To date, DEFENDANT has not  
5 fully and timely paid the PLAINTIFF for all his wages still owed to him or any penalty wages  
6 owed to him under California Labor Code § 203.

7         3. PLAINTIFF brings this Class Action on behalf of himself and a California class,  
8 defined as all persons who are or previously were employed by DEFENDANT in California  
9 who were paid in whole or in part on a piece rate basis (the “CALIFORNIA CLASS”) at any  
10 time during the period beginning four years from the date of filing of the original Complaint and  
11 ending on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The  
12 amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under  
13 five million dollars (\$5,000,000.00).

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

25         5. The true names and capacities, whether individual, corporate, subsidiary,  
26 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently  
27 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant  
28 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this First Amended

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 First Amended Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged

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

## THE CONDUCT

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

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

3 8. As a result of their rigorous work schedules and DEFENDANT's understaffing,  
4 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time unable to take  
5 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and  
6 other CALIFORNIA CLASS Members were required to perform work as ordered by  
7 DEFENDANT for more than five (5) hours during some shifts without receiving an off-duty  
8 meal break as evidenced by DEFENDANT's business records. PLAINTIFF and other members  
9 of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation  
10 and in accordance with DEFENDANT's strict corporate policy and practice.

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

1 CLASS Members with all the legally required paid rest periods is evidenced by  
2 DEFENDANT's business records.

3 10. When PLAINTIFF and other CALIFORNIA CLASS Members were required to  
4 miss meal and rest breaks, and/or were not paid all minimum and overtime wages owed to them,  
5 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA  
6 CLASS with complete and accurate wage statements which failed to show, among other things,  
7 the correct wages paid, including the wages paid for missed meal and rest breaks. Cal. Lab.  
8 Code § 226 provides that every employer shall furnish each of his or her employees with an  
9 accurate itemized wage statement in writing showing, among other things, gross wages earned  
10 and all applicable hourly rates in effect during the pay period and the corresponding amount of  
11 time worked at each hourly rate. Further, from time to time, DEFENDANT included Vacation  
12 hours into the computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2),  
13 notwithstanding the fact that Vacation hours are not considered hours worked. DEFENDANT's  
14 inclusion of Vacation hours into the total hours worked in itemized wage statements issued to  
15 PLAINTIFF and other CALIFORNIA CLASS Members violates Cal. Lab. Code § 226(a)(2).  
16 Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to  
17 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor  
18 Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the  
19 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.  
20 Code § 226.

21 11. In violation of the applicable sections of the California Labor Code and the  
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a  
23 matter of company policy, practice and procedure, intentionally, knowingly and systematically  
24 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for  
25 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to  
26 purposefully avoid the payment for all time worked as required by California law which allows  
27 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied  
28 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA

1 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
2 accordingly.

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

14 13. In the course of their employment, PLAINTIFF and other CALIFORNIA  
15 CLASS Members as a business expense, were required by DEFENDANT to use their own  
16 personal cellular phones and personal vehicles as a result of and in furtherance of their job  
17 duties as employees for DEFENDANT but were not reimbursed or indemnified by  
18 DEFENDANT for the cost associated with the use of their personal cellular phones and personal  
19 vehicles for DEFENDANT'S benefit. Specifically, PLAINTIFF and other CALIFORNIA  
20 CLASS Members were required by DEFENDANT to use their personal cell phones and  
21 personal vehicles to conduct work related business. As a result, in the course of their  
22 employment with DEFENDANT the PLAINTIFF and other members of the CALIFORNIA  
23 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs  
24 related to the use of their personal cellular phones and personal vehicles all on behalf of and for  
25 the benefit of DEFENDANT.

26 14. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and  
27 the CALIFORNIA CLASS were paid in part on a piece-rate basis. In those instances where  
28 PLAINTIFF and the CALIFORNIA CLASS were paid in part on a piece-rate basis,

1 PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately compensated for all  
2 non-productive time at an hourly rate that is no less than the applicable minimum wage.  
3 Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA CLASS were  
4 paid in part on a piece-rate basis, DEFENDANT failed to separately compensate PLAINTIFF  
5 and the CALIFORNIA CLASS for all non-productive time, including but not limited to, paid  
6 rest periods, at an hourly rate that is no less than the applicable minimum wage. As a result,  
7 PLAINTIFF and the CALIFORNIA CLASS forfeited minimum wages and overtime wages by  
8 DEFENDANT'S failure to separately compensate their non-productive time at an hourly rate  
9 that is no less than the applicable minimum wage.

10 15. California Labor Code Section 246 mandates that paid sick time for non-  
11 employees shall be calculated in the same manner as the regular rate of pay for the workweek in  
12 which the non-exempt employee uses paid sick time, whether or not the employee actually  
13 works overtime in that workweek.

14 16. California Labor Code Section 246, *et seq.* requires an employer to furnish its  
15 employees with written wage statements setting forth the amount of paid sick leave available.  
16 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish  
17 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting  
18 forth the amount of paid sick leave available.

19 17. By reason of this uniform conduct applicable to PLAINTIFF and the other  
20 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in  
21 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*  
22 (the "UCL"), by engaging in a uniform company-wide policy, practice and procedure which  
23 failed to accurately calculate and record all missed meal and rest periods by PLAINTIFF and  
24 other CALIFORNIA CLASS Members. The proper recording of these employees' missed meal  
25 and rest breaks is the DEFENDANT's burden. As a result of DEFENDANT's intentional  
26 disregard of the obligation to meet this burden, DEFENDANT failed to properly calculate  
27 and/or pay all required compensation for work performed by the members of the CALIFORNIA  
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1 CLASS and violated the California Labor Code and regulations promulgated thereunder as  
2 herein alleged.

3 18. Specifically, as to PLAINTIFF, DEFENDANT failed to provide all the legally  
4 required off-duty meal and rest breaks to him as required by the applicable Wage Order and  
5 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT  
6 did not have a policy or practice which provided timely off-duty meal and rest breaks to  
7 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks. The  
8 nature of the work performed by the PLAINTIFF did not prevent him from being relieved of all  
9 of his duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure  
10 to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's  
11 business records. As a result of DEFENDANT not accurately recording all missed meal and rest  
12 periods and/or the correct overtime rate, and/or separately compensated rest breaks, the wage  
13 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,  
14 Labor Code Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of his  
15 overtime wages due to him and DEFENDANT has failed to pay any penalty wages owed to him  
16 under California Labor Code Section 203 and/or 204. The amount in controversy for  
17 PLAINTIFF individually does not exceed the sum or value of \$75,000.

#### 18 **JURISDICTION AND VENUE**

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

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

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**THE CALIFORNIA CLASS**

21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all persons who are or previously were employed by DEFENDANT in California who were paid in whole or in part on a piece rate basis (the "CALIFORNIA CLASS") at any time during the period beginning four years from the date of the filing of this original Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD") The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

22. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

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

24. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws. The DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law. This common business practice is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-

1 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§  
2 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

3 25. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA  
4 CLASS Members is impracticable.

5 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
6 California law by:

- 7 a. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code  
8 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having  
9 in place company policies, practices and procedures that uniformly and  
10 systematically failed to record and pay PLAINTIFF and the other members of the  
11 CALIFORNIA CLASS for all time worked, including minimum wages owed and  
12 overtime wages owed for work performed by these employees;
- 13 b. Committing an act of unfair competition in violation of the UCL, by failing to  
14 provide mandatory meal and/or rest breaks to PLAINTIFF and the  
15 CALIFORNIA CLASS members; and
- 16 c. Committing an act of unfair competition in violation of the UCL, by failing to  
17 separately compensate PLAINTIFF and the CALIFORNIA CLASS Members for  
18 their rest breaks.

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

- 21 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the  
22 joinder of all such persons is impracticable and the disposition of their claims as  
23 a class will benefit the parties and the Court;
- 24 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
25 raised in this First Amended Complaint are common to the CALIFORNIA  
26 CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- 27 c. The claims of the representative PLAINTIFF are typical of the claims of each  
28 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members

1 of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on  
2 a piece-rate basis who was subjected to the DEFENDANT's deceptive practice  
3 and policy which failed to provide the legally required meal and rest periods to  
4 the CALIFORNIA CLASS and thereby systematically underpaid compensation  
5 to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic  
6 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the  
7 members of the CALIFORNIA CLASS were and are similarly or identically  
8 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
9 misconduct engaged in by DEFENDANT; and

- 10 d. The representative PLAINTIFF will fairly and adequately represent and protect  
11 the interest of the CALIFORNIA CLASS, and have retained counsel who are  
12 competent and experienced in Class Action litigation. There are no material  
13 conflicts between the claims of the representative PLAINTIFF and the members  
14 of the CALIFORNIA CLASS that would make class certification inappropriate.  
15 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all  
16 CALIFORNIA CLASS Members.

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

- 19 a. Without class certification and determination of declaratory, injunctive, statutory  
20 and other legal questions within the class format, prosecution of separate actions  
21 by individual members of the CALIFORNIA CLASS will create the risk of:
- 22 i. Inconsistent or varying adjudications with respect to individual members  
23 of the CALIFORNIA CLASS which would establish incompatible  
24 standards of conduct for the parties opposing the CALIFORNIA CLASS;  
25 and/or;
  - 26 ii. Adjudication with respect to individual members of the CALIFORNIA  
27 CLASS which would as a practical matter be dispositive of interests of  
28

1 the other members not party to the adjudication or substantially impair or  
2 impede their ability to protect their interests.

3 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on  
4 grounds generally applicable to the CALIFORNIA CLASS, making appropriate  
5 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that  
6 DEFENDANT uniformly failed to pay all wages due to members of the  
7 CALIFORNIA CLASS as required by law;

8 i. With respect to the First Cause of Action, the final relief on behalf of the  
9 CALIFORNIA CLASS sought does not relate exclusively to restitution  
10 because through this claim PLAINTIFF seeks declaratory relief holding  
11 that the DEFENDANT's policy and practices constitute unfair  
12 competition, along with declaratory relief, injunctive relief, and incidental  
13 equitable relief as may be necessary to prevent and remedy the conduct  
14 declared to constitute unfair competition;

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

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

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

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

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

11                   iii. In the context of wage litigation, because a substantial number of  
12                   individual CALIFORNIA CLASS Members will avoid asserting their  
13                   legal rights out of fear of retaliation by DEFENDANT, which may  
14                   adversely affect an individual's job with DEFENDANT or with a  
15                   subsequent employer, the Class Action is the only means to assert their  
16                   claims through a representative; and

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

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

24                         a. The questions of law and fact common to the CALIFORNIA CLASS  
25                         predominate over any question affecting only individual CALIFORNIA CLASS  
26                         Members because the DEFENDANT's employment practices were uniform and  
27                         systematically applied with respect to the CALIFORNIA CLASS.  
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- 1 b. A Class Action is superior to any other available method for the fair and efficient  
2 adjudication of the claims of the members of the CALIFORNIA CLASS because  
3 in the context of employment litigation a substantial number of individual  
4 CALIFORNIA CLASS Members will avoid asserting their rights individually  
5 out of fear of retaliation or adverse impact on their employment;
- 6 c. The members of the CALIFORNIA CLASS are so numerous that it is  
7 impractical to bring all members of the CALIFORNIA CLASS before the Court;
- 8 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to  
9 obtain effective and economic legal redress unless the action is maintained as a  
10 Class Action;
- 11 e. There is a community of interest in obtaining appropriate legal and equitable  
12 relief for the acts of unfair competition, statutory violations and other  
13 improprieties, and in obtaining adequate compensation for the damages and  
14 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA  
15 CLASS;
- 16 f. There is a community of interest in ensuring that the combined assets of  
17 DEFENDANT are sufficient to adequately compensate the members of the  
18 CALIFORNIA CLASS for the injuries sustained;
- 19 g. DEFENDANT has acted or refused to act on grounds generally applicable to the  
20 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with  
21 respect to the CALIFORNIA CLASS as a whole;
- 22 h. The members of the CALIFORNIA CLASS are readily ascertainable from the  
23 business records of DEFENDANT; and
- 24 i. Class treatment provides manageable judicial treatment calculated to bring an  
25 efficient and rapid conclusion to all litigation of all wage and hour related claims  
26 arising out of the conduct of DEFENDANT as to the members of the  
27 CALIFORNIA CLASS.  
28

1           30. DEFENDANT maintains records from which the Court can ascertain and  
2 identify by job title each of DEFENDANT's employees who as have been systematically,  
3 intentionally and uniformly subjected to DEFENDANT's company policy, practices and  
4 procedures as herein alleged. PLAINTIFF will seek leave to amend the First Amended  
5 Complaint to include any additional job titles of similarly situated employees when they have  
6 been identified.

7                                   **THE CALIFORNIA LABOR SUB-CLASS**

8           31. PLAINTIFF further brings the Second, Third, Fourth Fifth, Sixth, Seventh, and  
9 Eighth causes of Action on behalf of a California sub-class, defined as all members of the  
10 CALIFORNIA CLASS who were employed by DEFENDANT in California (the  
11 "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning three years  
12 from the date of the filing of the original Complaint and ending on the date as determined by the  
13 Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ.  
14 Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR  
15 SUB-CLASS Members is under five million dollars (\$5,000,000.00).

16           32. DEFENDANT, as a matter of company policy, practice and procedure, and in  
17 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
18 requirements, and the applicable provisions of California law, intentionally, knowingly,  
19 willfully, and systematically willfully, engaged in a practice whereby DEFENDANT failed to  
20 correctly calculate compensation for the time worked by PLAINTIFF and the other members of  
21 the CALIFORNIA LABOR SUB-CLASS and separately compensated rest breaks owed to these  
22 employees, even though DEFENDANT enjoyed the benefit of this work, required employees to  
23 perform this work and permitted or suffered to permit this work. DEFENDANT has uniformly  
24 denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees  
25 are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent  
26 equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against  
27 DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted  
28 accordingly.

1           33. DEFENDANT maintains records from which the Court can ascertain and  
2 identify by name and job title, each of DEFENDANT's employees who have been  
3 systematically, intentionally and uniformly subjected to DEFENDANT's company policy,  
4 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the First  
5 Amended Complaint to include these additional job titles when they have been identified.

6           34. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
7 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 10           a. Whether DEFENDANT unlawfully failed to correctly calculate and pay  
11           compensation due to members of the CALIFORNIA LABOR SUB-CLASS for  
12           minimum wages, overtime wages, missed meal and rest breaks in violation of the  
13           California Labor Code and California regulations and the applicable California  
14           Wage Order;
- 15           b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members  
16           of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage  
17           statements;
- 18           c. Whether DEFENDANT has engaged in unfair competition by the above-listed  
19           conduct;
- 20           d. The proper measure of damages and penalties owed to the members of the  
21           CALIFORNIA LABOR SUB-CLASS; and
- 22           e. Whether DEFENDANT's conduct was willful.

23           36. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS  
24 under California law by:

- 25           a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the  
26           PLAINTIFF and the members of the CALIFORNIA LABOR SUB- CLASS all  
27           wages due for overtime worked, for which DEFENDANT is liable pursuant to  
28           Cal. Lab. Code § 1194;

- 1           b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to  
2           accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR  
3           SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable  
4           pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 5           c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the  
6           members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized  
7           statement in writing showing the corresponding correct amount of wages earned  
8           by the employee;
- 9           d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF  
10          and the other members of the CALIFORNIA CLASS with all legally required  
11          off-duty, uninterrupted thirty (30) minute meal breaks and the legally required  
12          rest breaks, and to separately compensate PLAINTIFF and the other members of  
13          the CALIFORNIA CLASS for rest breaks;
- 14          e. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an  
15          employee is discharged or quits from employment, the employer must pay the  
16          employee all wages due without abatement, by failing to tender full payment  
17          and/or restitution of wages owed or in the manner required by California law to  
18          the members of the CALIFORNIA LABOR SUB-CLASS who have terminated  
19          their employment.

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

- 22               a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so  
23               numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members  
24               is impracticable and the disposition of their claims as a class will benefit the  
25               parties and the Court;
- 26               b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
27               raised in this First Amended Complaint are common to the CALIFORNIA  
28

LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;

- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee paid on a piece-rate basis who was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and
- d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk of:
  - i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish

1 incompatible standards of conduct for the parties opposing the  
2 CALIFORNIA LABOR SUB-CLASS; or

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

7 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or  
8 refused to act on grounds generally applicable to the CALIFORNIA LABOR  
9 SUB-CLASS, making appropriate class-wide relief with respect to the  
10 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT  
11 uniformly fails to pay all wages due. Including the correct wages for all time  
12 worked by the members of the CALIFORNIA LABOR SUB-CLASS as required  
13 by law;

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

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

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

- 1                   1. Inconsistent or varying adjudications with respect to individual  
2                   members of the CALIFORNIA LABOR SUB-CLASS, which  
3                   would establish incompatible standards of conduct for the  
4                   DEFENDANT; and/or,  
5                   2. Adjudications with respect to individual members of the  
6                   CALIFORNIA LABOR SUB-CLASS would as a practical matter  
7                   be dispositive of the interests of the other members not parties to  
8                   the adjudication or substantially impair or impede their ability to  
9                   protect their interests;  
10                  iii. In the context of wage litigation because a substantial number of  
11                  individual CALIFORNIA LABOR SUB-CLASS Members will avoid  
12                  asserting their legal rights out of fear of retaliation by DEFENDANT,  
13                  which may adversely affect an individual’s job with DEFENDANT or  
14                  with a subsequent employer, the Class Action is the only means to assert  
15                  their claims through a representative; and,  
16                  iv. A class action is superior to other available methods for the fair and  
17                  efficient adjudication of this litigation because class treatment will  
18                  obviate the need for unduly and unnecessary duplicative litigation that is  
19                  likely to result in the absence of certification of this action pursuant to  
20                  Cal. Code of Civ. Proc. § 382.  
21                  39. This Court should permit this action to be maintained as a Class Action pursuant  
22                  to Cal. Code of Civ. Proc. § 382 because:  
23                  a. The questions of law and fact common to the CALIFORNIA LABOR SUB-  
24                  CLASS predominate over any question affecting only individual CALIFORNIA  
25                  LABOR SUB-CLASS Members;  
26                  b. A Class Action is superior to any other available method for the fair and efficient  
27                  adjudication of the claims of the members of the CALIFORNIA LABOR SUB-  
28                  CLASS because in the context of employment litigation a substantial number of

1 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting  
2 their rights individually out of fear of retaliation or adverse impact on their  
3 employment;

4 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that  
5 it is impractical to bring all members of the CALIFORNIA LABOR SUB-  
6 CLASS before the Court;

7 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will  
8 not be able to obtain effective and economic legal redress unless the action is  
9 maintained as a Class Action;

10 e. There is a community of interest in obtaining appropriate legal and equitable  
11 relief for the acts of unfair competition, statutory violations and other  
12 improprieties, and in obtaining adequate compensation for the damages and  
13 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA  
14 LABOR SUB-CLASS;

15 f. There is a community of interest in ensuring that the combined assets of  
16 DEFENDANT are sufficient to adequately compensate the members of the  
17 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

18 g. DEFENDANT has acted or refused to act on grounds generally applicable to the  
19 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief  
20 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

21 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily  
22 ascertainable from the business records of DEFENDANT. The CALIFORNIA  
23 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were  
24 employed by DEFENDANT in California during the CALIFORNIA LABOR  
25 SUB-CLASS PERIOD; and

26 i. Class treatment provides manageable judicial treatment calculated to bring an  
27 efficient and rapid conclusion to all litigation of all wage and hour related claims  
28

arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

**FIRST CAUSE OF ACTION**

**UNLAWFUL BUSINESS PRACTICES**

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

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

40. 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 First Amended Complaint.

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

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

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

43. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802, for which this Court should issue declaratory and other equitable relief pursuant

1 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held  
2 to constitute unfair competition, including restitution of wages wrongfully withheld.

3 44. By the conduct alleged herein, DEFENDANT's practices were unlawful and  
4 unfair in that these practices violated public policy, were immoral, unethical, oppressive  
5 unscrupulous or substantially injurious to employees, and were without valid justification or  
6 utility for which this Court should issue equitable and injunctive relief pursuant to Section  
7 17203 of the California Business & Professions Code, including restitution of wages wrongfully  
8 withheld.

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

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

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

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

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

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

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

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

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

26 54. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices  
28 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As

1 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the  
2 other members of the CALIFORNIA CLASS have suffered and will continue to suffer  
3 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to  
4 engage in these unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

13 56. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
14 bring a claim for DEFENDANT'S willful and intentional violations of the California Labor  
15 Code and the Industrial Welfare Commission requirements for DEFENDANT'S failure to  
16 accurately calculate and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS  
17 Members.

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

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

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

25 60. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and  
26 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct  
27 amount of time they worked, and instead paying PLAINTIFF and other members of the  
28 CALIFORNIA LABOR SUB-CLASS on a piece-rate per-visit basis. As set forth herein,

1 DEFENDANT’S uniform policy and practice was to unlawfully and intentionally deny timely  
2 payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR  
3 SUB-CLASS.

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

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

15 63. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,  
16 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
17 receive the minimum wage compensation for all their time worked for DEFENDANT.

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

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

27 66. DEFENDANT knew or should have known that PLAINTIFF and the other  
28 members of the CALIFORNIA LABOR SUB-CLASS are under-compensated for their time

1 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross  
2 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy,  
3 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to  
4 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the  
5 correct minimum wages for their time worked.

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

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

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

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

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

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

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

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

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

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

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

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

13                                   **FOURTH CAUSE OF ACTION**

14                                   **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

21           86. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all  
22 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR  
23 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature  
24 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS  
25 did not prevent these employees from being relieved of all of their duties for the legally required  
26 off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other  
27 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by  
28 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide

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

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

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

16 **FIFTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

24 90. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS  
25 Members were required to work in excess of four (4) hours without being provided ten (10)  
26 minute rest periods. Further, these employees were denied their first rest periods of at least ten  
27 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest  
28 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,

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

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

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

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

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

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

5 102. Cal. Lab. Code § 203 provides:

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

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

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

21 **EIGHTH CAUSE OF ACTION**

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

23 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

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

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

1 **NINTH CAUSE OF ACTION**

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

3 **[Cal. Labor Code §§ 2698-2699.5]**

4 **(Alleged by PLAINTIFF and the AGGRIEVED EMPLOYEES and against all**  
5 **Defendants)**

6 109. PLAINTIFF and the aggrieved employees, defined as all current and former non-  
7 exempt employees of DEFENDANTS who suffered one or more Labor Code violations  
8 enumerated in Labor Code § 2698 *et seq.* ("AGGRIEVED EMPLOYEES") between January 10,  
9 2021 and the present ("PAGA PERIOD") reallege and incorporate by this reference, as though  
10 fully set forth herein, the prior paragraphs of this First Amended Complaint.

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

21 111. PLAINTIFF brings this Representative Action on behalf of the State of California  
22 with respect to himself and all other current and former AGGRIEVED EMPLOYEES employed  
23 by DEFENDANTS during the PAGA PERIOD.

24 112. At all relevant times, for the reasons described herein, and others, PLAINTIFF  
25 and similarly situated employees were aggrieved employees of DEFENDANTS within the  
26 meaning of Labor Code Section 2699(c).

27 113. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE,  
28 like PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil

1 action to recover civil penalties pursuant to the procedures specified in Labor Code Section  
2 2699.3

3 114. PLAINTIFF complied with the procedures for bringing suit specified in Labor  
4 Code Section 2699.3. By certified letter, return receipt requested, dated January 10, 2022,  
5 PLAINTIFF gave written notice to the Labor and Workforce Development Agency (“LWDA”)  
6 and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated,  
7 including the facts and theories to support the alleged violations. A true and correct copy of this  
8 letter is attached hereto as **Exhibit A**.

9 115. As of March 16, 2022, more than sixty-five (65) days after serving the LWDA  
10 with notice of DEFENDANTS’ violations, the LWDA has not provided any notice by certified  
11 mail of its intent to investigate the Defendant PP’s alleged violations as mandated by Labor Code  
12 Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A,  
13 PLAINTIFF may commence and is authorized to pursue this cause of action.

14 116. The policies, acts and practices heretofore described were and are an unlawful  
15 business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED  
16 EMPLOYEES minimum wages and overtime wages, (b) failed to provide PLAINTIFFS and  
17 other AGGRIEVED EMPLOYEES legally required meal and rest breaks, and/or separately  
18 compensate for rest breaks, (c) failed to provide accurate itemized wage statements, and (d)  
19 failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor  
20 Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,  
21 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14,  
22 1198, 1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and thereby gives rise  
23 to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil  
24 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the  
25 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and  
26 the other AGGRIEVED EMPLOYEES.

27 117. Some or all of the conduct and violations alleged herein occurred during the  
28 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not

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

7 **PRAYER FOR RELIEF**

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

10 1. On behalf of the CALIFORNIA CLASS:

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

21 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 22 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth  
23 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class  
24 action pursuant to Cal. Code of Civ. Proc. § 382;  
25 b. Compensatory damages, according to proof at trial, including compensatory  
26 damages for minimum wages, overtime compensation, unreimbursed expenses,  
27 and separately owed rest periods, due to PLAINTIFF and the other members of  
28 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA

LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

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

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

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

3. On behalf of the State of California: For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act;

4. On all claims:

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

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

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

DATED: March 16, 2022

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for PLAINTIFF

**DEMAND FOR A JURY TRIAL**

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

DATED: March 16, 2022

**ZAKAY LAW GROUP, APLC**

By: 

Shani O. Zakay  
Attorney for PLAINTIFF

# **EXHIBIT A**



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

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January 10, 2022

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

**UNI CARE HOME HEALTH, INC.**

c/o ALBERT KESHAVARZI  
1510 S. Escondido Blvd., #101  
Escondido, CA 92025

***Sent via Certified Mail and Return Receipt No. 7021 2720 0000 9972 6426***

**Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 223, 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 LUIS DE JESUS CLAUDIO ("Plaintiff") and other aggrieved employees in a proposed class action lawsuit against UNI CARE HOME HEALTH, INC. ("Defendant"). Plaintiff was employed by Defendant in California from October 2020 to February 2021 as a non-exempt employee paid on a piece-rate basis. As a non-exempt employee paid on a piece-rate basis, Plaintiff was entitled to legally required meal and rest periods and separate compensation for non-productive time. 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 and separate compensation for all non-productive time.

As a consequence, Client contends that Defendant failed to fully compensate him, and other similarly situated and aggrieved employees, for all earned wages and failed to provide 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, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 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, exempt and/or piece-rate based employees who were employed by Defendant in California during the relevant claim period.**

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

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

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* 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 Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Sincerely,  
JCL LAW FIRM, APC

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

Jean-Claude Lapuyade, Esq.

Enclosure (1)

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Attorneys for Plaintiff LUIS DE JESUS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

LUIS DE JESUS CLAUDIO, an individual, on  
behalf of himself and on behalf of all persons  
similarly situated,

Plaintiff,

v.

UNI CARE HOME HEALTH 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; and  
8) FAILURE TO REIMBURSE EMPLOYEES  
FOR REQUIRED EXPENSES IN  
VIOLATION OF CAL. LAB. CODE §  
2802

**DEMAND FOR A JURY TRIAL**

Plaintiff LUIS DE JESUS CLAUDIO (“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 UNI CARE HOME HEALTH 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. DEFENDANT offers a full spectrum of home health care, hospice, in-home health and telehealth services.

2. PLAINTIFF was employed by DEFENDANT in California from October 2020 to February 2021 as a registered nurse, and was at all times classified by DEFENDANT as a non-exempt employee, paid on a piece-rate basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. PLAINTIFF was paid by piece-rate only while he was performing visits for DEFENDANT in accordance with DEFENDANT’s compensation package. Importantly, PLAINTIFF was not provided with minimum wages for his non-production work time. PLAINTIFF also did not receive paid rest breaks as required by California law. DEFENDANT failed to pay PLAINTIFF the correct amount of compensation because DEFENDANT established an illegal pay practice of paying PLAINTIFF on a piece rate basis when conducting visits with patients assigned by DEFENDANT. DEFENDANT however failed to pay minimum wages for compensable time worked, including time spent traveling between visits, and time spent for filling out charts before/after visits. DEFENDANT also failed to pay PLAINTIFF any overtime wages for all overtime worked, thereby uniformly resulting in PLAINTIFF being underpaid for all time worked during his employment, including overtime worked. To date, DEFENDANT has not

1 fully and timely paid the PLAINTIFF for all his wages still owed to him or any penalty wages  
2 owed to him under California Labor Code § 203.

3         3. PLAINTIFF brings this Class Action on behalf of himself and a California class,  
4 defined as all persons who are or previously were employed by DEFENDANT in California  
5 who were paid in whole or in part on a piece rate basis (the “CALIFORNIA CLASS”) at any  
6 time during the period beginning four years from the date of filing of this Complaint and ending  
7 on the date as determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in  
8 controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five  
9 million dollars (\$5,000,000.00).

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

21         5. The true names and capacities, whether individual, corporate, subsidiary,  
22 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently  
23 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant  
24 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege  
25 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.  
26 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that  
27 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are  
28

1 responsible in some manner for one or more of the events and happenings that proximately  
2 caused the injuries and damages hereinafter alleged

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

### 11                                     **THE CONDUCT**

12         7.     Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT  
13 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time  
14 worked, meaning the time during which an employee is subject to the control of an employer,  
15 including all the time the employee is suffered or permitted to work. DEFENDANT required  
16 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time  
17 they were under DEFENDANT's control. Importantly, PLAINTIFF was not provided with  
18 minimum wages for all of his non-visit work time when DEFENDANT only paid PLAINTIFF  
19 and other CALIFORNIA CLASS Members a flat piece rate per visit, regardless of how many  
20 hours were worked, and regardless of how much time was spent working before or after the  
21 visit. PLAINTIFF also did not receive paid rest breaks as required by California law when being  
22 paid a piece rate by DEFENDANT. As a result, the PLAINTIFF and other CALIFORNIA  
23 CLASS Members forfeited minimum wage and overtime compensation by regularly working  
24 without their time being accurately recorded and without compensation at the applicable  
25 minimum wage and overtime rates, or separate compensation for rest breaks. DEFENDANT's  
26 uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members  
27 for all time worked is evidenced by DEFENDANT's business records.

1           8.     As a result of their rigorous work schedules and DEFENDANT's understaffing,  
2 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time unable to take  
3 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and  
4 other CALIFORNIA CLASS Members were required to perform work as ordered by  
5 DEFENDANT for more than five (5) hours during some shifts without receiving an off-duty  
6 meal break as evidenced by DEFENDANT's business records. PLAINTIFF and other members  
7 of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation  
8 and in accordance with DEFENDANT's strict corporate policy and practice.

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

1           10. When PLAINTIFF and other CALIFORNIA CLASS Members were required to  
2 miss meal and rest breaks, and/or were not paid all minimum and overtime wages owed to them,  
3 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA  
4 CLASS with complete and accurate wage statements which failed to show, among other things,  
5 the correct wages paid, including the wages paid for missed meal and rest breaks. Cal. Lab.  
6 Code § 226 provides that every employer shall furnish each of his or her employees with an  
7 accurate itemized wage statement in writing showing, among other things, gross wages earned  
8 and all applicable hourly rates in effect during the pay period and the corresponding amount of  
9 time worked at each hourly rate. Further, from time to time, DEFENDANT included Vacation  
10 hours into the computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2),  
11 notwithstanding the fact that Vacation hours are not considered hours worked. DEFENDANT's  
12 inclusion of Vacation hours into the total hours worked in itemized wage statements issued to  
13 PLAINTIFF and other CALIFORNIA CLASS Members violates Cal. Lab. Code § 226(a)(2).  
14 Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to  
15 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor  
16 Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the  
17 other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.  
18 Code § 226.

19           11. In violation of the applicable sections of the California Labor Code and the  
20 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a  
21 matter of company policy, practice and procedure, intentionally, knowingly and systematically  
22 failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for  
23 missed meal and rest periods. This uniform policy and practice of DEFENDANT is intended to  
24 purposefully avoid the payment for all time worked as required by California law which allows  
25 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied  
26 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
27 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
28 accordingly.

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

12           13.     In the course of their employment, PLAINTIFF and other CALIFORNIA  
13 CLASS Members as a business expense, were required by DEFENDANT to use their own  
14 personal cellular phones and personal vehicles as a result of and in furtherance of their job  
15 duties as employees for DEFENDANT but were not reimbursed or indemnified by  
16 DEFENDANT for the cost associated with the use of their personal cellular phones and personal  
17 vehicles for DEFENDANT'S benefit. Specifically, PLAINTIFF and other CALIFORNIA  
18 CLASS Members were required by DEFENDANT to use their personal cell phones and  
19 personal vehicles to conduct work related business. As a result, in the course of their  
20 employment with DEFENDANT the PLAINTIFF and other members of the CALIFORNIA  
21 CLASS incurred unreimbursed business expenses which included, but were not limited to, costs  
22 related to the use of their personal cellular phones and personal vehicles all on behalf of and for  
23 the benefit of DEFENDANT.

24           14.     From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and  
25 the CALIFORNIA CLASS were paid in part on a piece-rate basis. In those instances where  
26 PLAINTIFF and the CALIFORNIA CLASS were paid in part on a piece-rate basis,  
27 PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately compensated for all  
28 non-productive time at an hourly rate that is no less than the applicable minimum wage.

1 Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA CLASS were  
2 paid in part on a piece-rate basis, DEFENDANT failed to separately compensate PLAINTIFF  
3 and the CALIFORNIA CLASS for all non-productive time, including but not limited to, paid  
4 rest periods, at an hourly rate that is no less than the applicable minimum wage. As a result,  
5 PLAINTIFF and the CALIFORNIA CLASS forfeited minimum wages and overtime wages by  
6 DEFENDANT'S failure to separately compensate their non-productive time at an hourly rate  
7 that is no less than the applicable minimum wage.

8 15. California Labor Code Section 246 mandates that paid sick time for non-  
9 employees shall be calculated in the same manner as the regular rate of pay for the workweek in  
10 which the non-exempt employee uses paid sick time, whether or not the employee actually  
11 works overtime in that workweek.

12 16. California Labor Code Section 246, *et seq.* requires an employer to furnish its  
13 employees with written wage statements setting forth the amount of paid sick leave available.  
14 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish  
15 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting  
16 forth the amount of paid sick leave available.

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

1           18. Specifically, as to PLAINTIFF, DEFENDANT failed to provide all the legally  
2 required off-duty meal and rest breaks to him as required by the applicable Wage Order and  
3 Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT  
4 did not have a policy or practice which provided timely off-duty meal and rest breaks to  
5 PLAINTIFF and also failed to compensate PLAINTIFF for his missed meal and rest breaks. The  
6 nature of the work performed by the PLAINTIFF did not prevent him from being relieved of all  
7 of his duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure  
8 to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's  
9 business records. As a result of DEFENDANT not accurately recording all missed meal and rest  
10 periods and/or the correct overtime rate, and/or separately compensated rest breaks, the wage  
11 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,  
12 Labor Code Section 226(a). To date, DEFENDANT has yet to pay PLAINTIFF all of his  
13 overtime wages due to him and DEFENDANT has failed to pay any penalty wages owed to him  
14 under California Labor Code Section 203 and/or 204. The amount in controversy for  
15 PLAINTIFF individually does not exceed the sum or value of \$75,000.

#### 16                                   **JURISDICTION AND VENUE**

17           19. This Court 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 PLAINTIFFS and similarly situated employees  
20 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

21           20. 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 CALIFORNIA CLASS**

27           21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive  
28 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class

1 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all  
2 persons who are or previously were employed by DEFENDANT in California who were paid in  
3 whole or in part on a piece rate basis (the “CALIFORNIA CLASS”) at any time during the  
4 period beginning four years from the date of the filing of this Complaint and ending on the date  
5 as determined by the Court (the “CALIFORNIA CLASS PERIOD”) The amount in controversy  
6 for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars  
7 (\$5,000,000.00).

8 22. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
9 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
10 accordingly.

11 23. DEFENDANT, as a matter of company policy, practice and procedure, and in  
12 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order  
13 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
14 willfully, engaged in a practice whereby DEFENDANT systematically failed to record all meal  
15 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though  
16 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and  
17 permits or suffers to permit this work.

18 24. DEFENDANT has the legal burden to establish that each and every  
19 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as  
20 required by California laws. The DEFENDANT, however, as a matter of uniform and  
21 systematic policy and procedure failed to have in place during the CALIFORNIA CLASS  
22 PERIOD and still fails to have in place a policy or practice to ensure that each and every  
23 CALIFORNIA CLASS Member is paid as required by law. This common business practice is  
24 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-  
25 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§  
26 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

27 25. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA  
28 CLASS Members is impracticable.

1           26.     DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
2 California law by:

- 3           a.     Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code  
4                 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having  
5                 in place company policies, practices and procedures that uniformly and  
6                 systematically failed to record and pay PLAINTIFF and the other members of the  
7                 CALIFORNIA CLASS for all time worked, including minimum wages owed and  
8                 overtime wages owed for work performed by these employees;
- 9           b.     Committing an act of unfair competition in violation of the UCL, by failing to  
10                provide mandatory meal and/or rest breaks to PLAINTIFF and the  
11                CALIFORNIA CLASS members; and
- 12           c.     Committing an act of unfair competition in violation of the UCL, by failing to  
13                separately compensate PLAINTIFF and the CALIFORNIA CLASS Members for  
14                their rest breaks.

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

- 17           a.     The persons who comprise the CALIFORNIA CLASS are so numerous that the  
18                joinder of all such persons is impracticable and the disposition of their claims as  
19                a class will benefit the parties and the Court;
- 20           b.     Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are  
21                raised in this Complaint are common to the CALIFORNIA CLASS will apply  
22                uniformly to every member of the CALIFORNIA CLASS;
- 23           c.     The claims of the representative PLAINTIFF are typical of the claims of each  
24                member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members  
25                of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on  
26                a piece-rate basis who was subjected to the DEFENDANT's deceptive practice  
27                and policy which failed to provide the legally required meal and rest periods to  
28                the CALIFORNIA CLASS and thereby systematically underpaid compensation

1 to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic  
2 injury as a result of DEFENDANT's employment practices. PLAINTIFF and the  
3 members of the CALIFORNIA CLASS were and are similarly or identically  
4 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
5 misconduct engaged in by DEFENDANT; and

- 6 d. The representative PLAINTIFF will fairly and adequately represent and protect  
7 the interest of the CALIFORNIA CLASS, and have retained counsel who are  
8 competent and experienced in Class Action litigation. There are no material  
9 conflicts between the claims of the representative PLAINTIFF and the members  
10 of the CALIFORNIA CLASS that would make class certification inappropriate.  
11 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all  
12 CALIFORNIA CLASS Members.

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

- 15 a. Without class certification and determination of declaratory, injunctive, statutory  
16 and other legal questions within the class format, prosecution of separate actions  
17 by individual members of the CALIFORNIA CLASS will create the risk of:
- 18 i. Inconsistent or varying adjudications with respect to individual members  
19 of the CALIFORNIA CLASS which would establish incompatible  
20 standards of conduct for the parties opposing the CALIFORNIA CLASS;  
21 and/or;
- 22 ii. Adjudication with respect to individual members of the CALIFORNIA  
23 CLASS which would as a practical matter be dispositive of interests of  
24 the other members not party to the adjudication or substantially impair or  
25 impede their ability to protect their interests.
- 26 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on  
27 grounds generally applicable to the CALIFORNIA CLASS, making appropriate  
28 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that

1 DEFENDANT uniformly failed to pay all wages due to members of the  
2 CALIFORNIA CLASS as required by law;

3 i. With respect to the First Cause of Action, the final relief on behalf of the  
4 CALIFORNIA CLASS sought does not relate exclusively to restitution  
5 because through this claim PLAINTIFF seeks declaratory relief holding  
6 that the DEFENDANT's policy and practices constitute unfair  
7 competition, along with declaratory relief, injunctive relief, and incidental  
8 equitable relief as may be necessary to prevent and remedy the conduct  
9 declared to constitute unfair competition;

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

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

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

25 1. Inconsistent or varying adjudications with respect to individual  
26 members of the CALIFORNIA CLASS, which would establish  
27 incompatible standards of conduct for the DEFENDANT; and/or;  
28

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

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

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

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

a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices were uniform and systematically applied with respect to the CALIFORNIA CLASS.

b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

- 1 c. The members of the CALIFORNIA CLASS are so numerous that it is  
2 impractical to bring all members of the CALIFORNIA CLASS before the Court;
- 3 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to  
4 obtain effective and economic legal redress unless the action is maintained as a  
5 Class Action;
- 6 e. There is a community of interest in obtaining appropriate legal and equitable  
7 relief for the acts of unfair competition, statutory violations and other  
8 improprieties, and in obtaining adequate compensation for the damages and  
9 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA  
10 CLASS;
- 11 f. There is a community of interest in ensuring that the combined assets of  
12 DEFENDANT are sufficient to adequately compensate the members of the  
13 CALIFORNIA CLASS for the injuries sustained;
- 14 g. DEFENDANT has acted or refused to act on grounds generally applicable to the  
15 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with  
16 respect to the CALIFORNIA CLASS as a whole;
- 17 h. The members of the CALIFORNIA CLASS are readily ascertainable from the  
18 business records of DEFENDANT; and
- 19 i. Class treatment provides manageable judicial treatment calculated to bring an  
20 efficient and rapid conclusion to all litigation of all wage and hour related claims  
21 arising out of the conduct of DEFENDANT as to the members of the  
22 CALIFORNIA CLASS.

23 30. DEFENDANT maintains records from which the Court can ascertain and  
24 identify by job title each of DEFENDANT's employees who as have been systematically,  
25 intentionally and uniformly subjected to DEFENDANT's company policy, practices and  
26 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include  
27 any additional job titles of similarly situated employees when they have been identified.  
28

**THE CALIFORNIA LABOR SUB-CLASS**

31. PLAINTIFF further brings the Second, Third, Fourth Fifth, Sixth, Seventh, and Eighth causes of Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who were employed by DEFENDANT in California (the “CALIFORNIA LABOR SUB-CLASS”) at any time during the period beginning three years from the date of the filing of this Complaint and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

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

33. DEFENDANT maintains records from which the Court can ascertain and identify by name and job title, each of DEFENDANT’s employees who have been systematically, intentionally and uniformly subjected to DEFENDANT’s company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include these additional job titles when they have been identified.

1           34. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
2 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 5           a. Whether DEFENDANT unlawfully failed to correctly calculate and pay  
6           compensation due to members of the CALIFORNIA LABOR SUB-CLASS for  
7           minimum wages, overtime wages, missed meal and rest breaks in violation of the  
8           California Labor Code and California regulations and the applicable California  
9           Wage Order;
- 10          b. Whether DEFENDANT failed to provide the PLAINTIFF and the other members  
11          of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage  
12          statements;
- 13          c. Whether DEFENDANT has engaged in unfair competition by the above-listed  
14          conduct;
- 15          d. The proper measure of damages and penalties owed to the members of the  
16          CALIFORNIA LABOR SUB-CLASS; and
- 17          e. Whether DEFENDANT's conduct was willful.

18          36. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS  
19 under California law by:

- 20          a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the  
21          PLAINTIFF and the members of the CALIFORNIA LABOR SUB- CLASS all  
22          wages due for overtime worked, for which DEFENDANT is liable pursuant to  
23          Cal. Lab. Code § 1194;
- 24          b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to  
25          accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR  
26          SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable  
27          pursuant to Cal. Lab. Code §§ 1194 and 1197;

- c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks, and to separately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for rest breaks;
- e. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment.

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

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt

1 employee paid on a piece-rate basis who was subjected to the DEFENDANT's  
2 practice and policy which failed to pay the correct amount of wages due to the  
3 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as  
4 a result of DEFENDANT's employment practices. PLAINTIFF and the members  
5 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically  
6 harmed by the same unlawful, deceptive, unfair and pervasive pattern of  
7 misconduct engaged in by DEFENDANT; and

- 8 d. The representative PLAINTIFF will fairly and adequately represent and protect  
9 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained  
10 counsel who are competent and experienced in Class Action litigation. There are  
11 no material conflicts between the claims of the representative PLAINTIFF and  
12 the members of the CALIFORNIALABOR SUB-CLASS that would make class  
13 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS  
14 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS  
15 Members.

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

- 18 a. Without class certification and determination of declaratory, injunctive, statutory  
19 and other legal questions within the class format, prosecution of separate actions  
20 by individual members of the CALIFORNIA LABOR SUB-CLASS will create  
21 the risk of:
- 22 i. Inconsistent or varying adjudications with respect to individual members  
23 of the CALIFORNIA LABOR SUB-CLASS which would establish  
24 incompatible standards of conduct for the parties opposing the  
25 CALIFORNIA LABOR SUB-CLASS; or
- 26 ii. Adjudication with respect to individual members of the CALIFORNIA  
27 LABOR SUB-CLASS which would as a practical matter be dispositive of  
28

1 interests of the other members not party to the adjudication or  
2 substantially impair or impede their ability to protect their interests.

3 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or  
4 refused to act on grounds generally applicable to the CALIFORNIA LABOR  
5 SUB-CLASS, making appropriate class-wide relief with respect to the  
6 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT  
7 uniformly fails to pay all wages due. Including the correct wages for all time  
8 worked by the members of the CALIFORNIA LABOR SUB-CLASS as required  
9 by law;

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

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

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

25 1. Inconsistent or varying adjudications with respect to individual  
26 members of the CALIFORNIA LABOR SUB-CLASS, which  
27 would establish incompatible standards of conduct for the  
28 DEFENDANT; and/or,

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

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

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

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

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

- 1 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that  
2 it is impractical to bring all members of the CALIFORNIA LABOR SUB-  
3 CLASS before the Court;
- 4 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will  
5 not be able to obtain effective and economic legal redress unless the action is  
6 maintained as a Class Action;
- 7 e. There is a community of interest in obtaining appropriate legal and equitable  
8 relief for the acts of unfair competition, statutory violations and other  
9 improprieties, and in obtaining adequate compensation for the damages and  
10 injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA  
11 LABOR SUB-CLASS;
- 12 f. There is a community of interest in ensuring that the combined assets of  
13 DEFENDANT are sufficient to adequately compensate the members of the  
14 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 15 g. DEFENDANT has acted or refused to act on grounds generally applicable to the  
16 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief  
17 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 18 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily  
19 ascertainable from the business records of DEFENDANT. The CALIFORNIA  
20 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were  
21 employed by DEFENDANT in California during the CALIFORNIA LABOR  
22 SUB-CLASS PERIOD; and
- 23 i. Class treatment provides manageable judicial treatment calculated to bring an  
24 efficient and rapid conclusion to all litigation of all wage and hour related claims  
25 arising out of the conduct of DEFENDANT as to the members of the  
26 CALIFORNIA LABOR SUB-CLASS.
- 27  
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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 40. 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 41. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.  
9 Code § 17021.

10 42. 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  
13 competition 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,  
18 as 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 43. 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,  
25 1198, and 2802, for which this Court should issue declaratory and other equitable relief pursuant  
26 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held  
27 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

23           48. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each  
24 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty  
25 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay  
26 for each workday in which a second off-duty meal period was not timely provided for each ten  
27 (10) hours of work.  
28

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

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

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

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

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

24          54. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
25 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices  
26 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As  
27 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the  
28 other members of the CALIFORNIA CLASS have suffered and will continue to suffer

1 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to  
2 engage in these unlawful and unfair business practices.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

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

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

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

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

23 60. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and  
24 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct  
25 amount of time they worked, and instead paying PLAINTIFF and other members of the  
26 CALIFORNIA LABOR SUB-CLASS on a piece-rate per-visit basis. As set forth herein,  
27 DEFENDANT'S uniform policy and practice was to unlawfully and intentionally deny timely  
28

1 payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR  
2 SUB-CLASS.

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

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

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

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

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

26 66. DEFENDANT knew or should have known that PLAINTIFF and the other  
27 members of the CALIFORNIA LABOR SUB-CLASS are under-compensated for their time  
28 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy,  
2 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to  
3 pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the  
4 correct minimum wages for their time worked.

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

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

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

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

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

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

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

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

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

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

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

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

13                                   **FOURTH CAUSE OF ACTION**

14                                   **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

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

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

21           86. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all  
22 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR  
23 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature  
24 of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS  
25 did not prevent these employees from being relieved of all of their duties for the legally required  
26 off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other  
27 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by  
28 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide

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

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

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

### 16 **FIFTH CAUSE OF ACTION**

#### 17 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

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

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

24 90. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS  
25 Members were required to work in excess of four (4) hours without being provided ten (10)  
26 minute rest periods. Further, these employees were denied their first rest periods of at least ten  
27 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest  
28 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours,

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

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

20 92. As a proximate result of the aforementioned violations, PLAINTIFF and  
21 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to  
22 proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.  
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1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

3 **(Cal. Lab. Code § 226)**

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

6 93. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
7 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of  
8 this Complaint.

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

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

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

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

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

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

5 102. Cal. Lab. Code § 203 provides:

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

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

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

21 **EIGHTH CAUSE OF ACTION**

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

23 **(Cal. Lab. Code §§ 2802)**

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

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

106. 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.

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

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

1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

15 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth  
17 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class  
18 action pursuant to Cal. Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory  
20 damages for minimum wages, overtime compensation, unreimbursed expenses,  
21 and separately owed rest periods, due to PLAINTIFF and the other members of  
22 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA  
23 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
- 24 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
25 the applicable IWC Wage Order;
- 26 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
27 which a violation occurs and one hundred dollars (\$100) per each member of the  
28 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay

period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and  
an award of costs for violation of Cal. Lab. Code § 226

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

3. On 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: January 10, 2022

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for PLAINTIFF

**DEMAND FOR A JURY TRIAL**

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

DATED: January 10, 2022

**ZAKAY LAW GROUP, APLC**

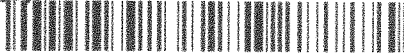
By:   
Shani O. Zakay  
Attorney for PLAINTIFF

## 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:

uni care Home Health. Inc.  
 c/o Albert Keshavortzi  
 1510 S. Escondido Blvd #101  
 Escondido, CA 92025



9590 9402 6744 1060 3010 11

2. Article Number (Transfer from service label)

7021 2720 0000 9972 6426

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

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

☐ Agent☐ Addressee

B. Received by (Printed Name)

Yessenia Jimenez

C. Date of Delivery

1-12-21

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

De Jesus

3. Service Type

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

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Insured Mail Restricted Delivery  
(over \$500)

Domestic Return Receipt

**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:

uni care Home Health, Inc.  
 c/o Albert Reshavatz  
 1510 S. Escondido Blvd #101  
 Escondido, CA 92025



9590 9402 6744 1060 3010 11

2. Article Number (Transfer from service label)

7021 2720 0000 9972 6426

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*[Handwritten Signature]*

B. Received by (Printed Name)

Yessenia Jimenez

C. Date of

1-1

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

De Jesus

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Registered Mail
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation
- ☐ Signature Confirmation Restricted Delivery
- ☐ Priority Mail Express
- ☐ Registered Mail Delivery
- ☐ Signature Confirmation Restricted Delivery

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

Domestic Return