

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

THE DAVEY TREE EXPERT COMPANY, an Ohio corporation; and
DOES 1 through 50, Inclusive;

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

JALIL HASIM, an individual, on behalf of himself, and on behalf of all
persons similarly situated,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

San Francisco Superior Court
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
(Número del Caso):

CGC-21-595544

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291

JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE:
(Fecha) **10/25/2021**

Clerk, by _____, Deputy
(Secretario) **JACKIE LAPREVOTTE** (Adjunto)

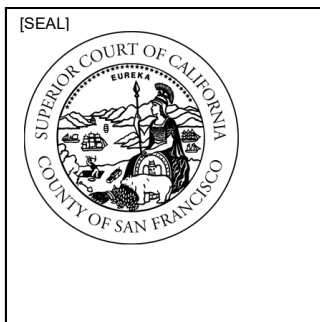
(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

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

NOTICE TO THE PERSON SERVED: You are served

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

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



JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar #290572)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

egarcia@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jackland K. Hom (State Bar #327243)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619)255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

Attorneys for Plaintiff JALIL HASIM

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

JALIL HASIM, an individual, on behalf of the
State of California and other Aggrieved
Employees,

Plaintiff,

vs.

THE DAVEY TREE EXPERT COMPANY, an
Ohio corporation; and DOES 1 through 50,
Inclusive;

Defendant.

Case No. _____

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SECTIONS 2698 *ET SEQ.*

DEMAND FOR JURY TRIAL

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

09/28/2021

Clerk of the Court

BY: JACKIE LAPREVOTTE
Deputy Clerk

CGC-21-595544

1 Plaintiff JALIL HASIM (“PLAINTIFF”) an individual, in his representative capacity on behalf
2 of the himself, the State of California, and fellow current and former AGGRIEVED EMPLOYEES,
3 defined *supra*, against THE DAVEY TREE EXPERT COMPANY (“DEFENDANT”), alleges on
4 information and belief, except for his own acts and knowledge which are based on personal knowledge,
5 the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys General
8 Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former
9 aggrieved employees of DEFENDANT for engaging in a pattern and practice of wage and hour
10 violations under the California Labor Code.

11 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT decreased
12 their employment-related costs by systematically violating California wage and hour laws.

13 3. DEFENDANT’s systematic pattern of wage and hour and IWC Wage Order violations
14 toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 15 a. Failure to provide compliant meal periods;
- 16 b. Failure to provide compliant rest periods;
- 17 c. Failure to pay all minimum, regular and overtime wages, including at the correct rate;
- 18 d. Failure to reimburse for business expenses;
- 19 e. Failure to maintain true and accurate records;
- 20 f. Failure to provide accurate itemized wage statements; and
- 21 g. Failure to timely pay wages due during, and upon termination of employment.

22 4. PLAINTIFF brings this representative action against DEFENDANTS on behalf of himself
23 and all other aggrieved employees of DEFENDANT in California seeking all civil penalties and unpaid
24 wages permitted pursuant to California Labor Code § 2699, *et seq.*

25 5. PLAINTIFF reserves the right to name additional representatives throughout the State of
26 California.

27 ///

THE PARTIES

6. Defendant THE DAVEY TREE EXPERT COMPANY (“DEFENDANT” and/or “DEFENDANTS”) is an Ohio corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Francisco, and provides professional tree and lawn care services.

7. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on an hourly basis and entitled to overtime pay and legally compliant meal and rest periods from February 2021 to April 2021.

8. PLAINTIFF brings this action in his representative capacity on behalf of the State of California and on behalf of all of DEFENDANT’s current and former employees employed in California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for DEFENDANT between July 21, 2020 and the present (“PAGA PERIOD”).

9. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code § 2699(c) because he was employed by DEFENDANT and suffered one or more of the alleged Labor Code violations committed by DEFENDANT.

10. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times were, employees of DEFENDANT, within the meanings set forth in the California Labor Code and the applicable Industrial Welfare Commission Wage Order.

11. Each of the fictitiously named defendants participated in the acts alleged in this Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts alleged in this Complaint.

12. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively “DEFENDANTS”), were PLAINTIFF’s employers or persons acting on behalf of PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused to be violated,

1 a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days
2 of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties
3 for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

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

9 **JOINT EMPLOYER**

10 14. The Private Attorney General Act ("PAGA"), permits an aggrieved employee to enforce
11 any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

12 15. Section 558 of the California Labor Code provides that "any employer or other person
13 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall
15 be subject to a civil penalty..." (*Lab. Code* § 558(a).);

16 16. Section 1197.1 of the Labor Code provides that "[a]ny employer or other person acting
17 either individually or as an officer, agent, or employee of another person, who pays or causes to be paid
18 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
19 of the commission shall be subject to a civil penalty..." (*Lab. Code* § 1197.1(a).)

20 17. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that
21 a corporate employer's owners, officers and directors, are subject to civil penalties for the employer's
22 failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does
23 not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v.*
24 *Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009
25 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

26 18. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and each
27 of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees
28

the appropriate wages as complained of herein and proximately caused the complaints, injuries, and damages alleged herein.

19. At all relevant times, each Defendant, whether named or fictitious, was the agent, employee or other person acting on behalf of each other Defendant, and, in participating in the acts alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts of the other.

20. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF's wages, working hours, and/or working conditions.

21. Each Defendant, whether named or fictitious, acted in all respects pertinent to this action as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or policy, and the acts of each Defendant are legally attributable to the other DEFENDANTS.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10. This Court has jurisdiction over PLAINTIFF's claims for civil penalties under the Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*

22. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County, and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against the AGGRIEVED EMPLOYEES.

THE CONDUCT

23. violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest period, failed to accurately compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time worked, and failed to issue to PLAINTIFF and the AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things,

all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

A. Meal Period Violations

24. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD, DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's demanding work requirements, and DEFENDANTS' under staffing, DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime wages by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

25. From time-to-time during the PAGA PERIOD, as a result of their rigorous work schedules, and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES were required from time to time to perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to time

1 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
2 for some workdays in which these employees were required by DEFENDANTS to work ten (10) hours
3 of work from time to time. The nature of the work performed by the PLAINTIFF and the AGGRIEVED
4 EMPLOYEES does not qualify for limited and narrowly construed “on-duty” meal period exception.
5 When they were provided with meal periods, PLAINTIFF and other AGGRIEVED EMPLOYEES
6 were, from time to time, required to remain on the premises, on-duty, and on-call. PLAINTIFF and
7 other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
8 and in accordance with DEFENDANTS’ strict corporate policy and practice. DEFENDANTS failed
9 to maintain adequate staffing levels while increasing the production levels for each employee at the
10 busy sites they provided landscape services for.

11 **B. Rest Period Violations**

12 26. From time-to-time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
13 EMPLOYEES were also required from time to time to work in excess of four (4) hours without being
14 provided ten (10) minute rest periods as a result of their rigorous work schedules and DEFENDANTS’
15 inadequate staffing. Further, for the same reasons these employees were denied their first rest periods
16 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
17 time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six
18 (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10)
19 minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided
20 with rest periods, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time,
21 required to remain on the premises, on-duty, and on-call. As a result of their rigorous work schedules
22 and DEFENDANTS’ inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were
23 always denied their proper rest periods by DEFENDANTS and DEFENDANTS’ managers.

24 **C. Overtime Regular Rate Violation**

25 27. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail
26 to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
27 overtime hours worked. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited
28 wages due them for working overtime without compensation at the correct overtime rates.

DEFENDANTS' uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct overtime rate for all overtime worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

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

29. The second component of PLAINTIFF'S and other AGGRIEVED EMPLOYEES compensation was DEFENDANTS' cash in lieu of benefits and non-discretionary incentive program that paid PLAINTIFF and other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly basis with bonus and/or commission compensation when the employees met the various performance goals set by DEFENDANTS.

30. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime and earned cash in lieu of benefits and/or non-discretionary bonus, DEFENDANTS failed to accurately include the cash in lieu of benefits and non-discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. Management and supervisors described the incentive/bonus program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment of overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANTS.

31. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime worked. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the correct overtime compensation as required by California law which allowed DEFENDANTS to illegally profit

and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

D. Unreimbursed Business Expenses

32. DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the AGGRIEVED EMPLOYEES or required business expenses they incurred in direct consequence of discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states 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."

33. From time-to-time during the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES were required by DEFENDANTS to use their own personal cellular phones as a result of and in furtherance of their job duties as employees for DEFENDANTS. But for the use of their personal cell phones, PLAINTIFF and the AGGRIEVED EMPLOYEES could not complete their essential job duties. Notwithstanding, DEFENDANTS did not reimburse or indemnify PLAINTIFF or the AGGRIEVED EMPLOYEES for the cost associated with the use of their personal cellular phones for DEFENDANTS' benefit. As a result, in the course of their employment with DEFENDANTS, PLAINTIFF and the AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but were not limited to, costs related to the use of their personal cellular phones, all on behalf of and for the benefit of DEFENDANTS.

E. Wage Statement Violations

34. California Labor Code Section 226 requires an employer to furnish its employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the

employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

35. From time to time during the PAGA PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, were paid inaccurate missed meal and rest period premiums, were paid overtime in the same pay period where they earned cash in lieu of benefits or non-discretionary incentive award, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show, among other things, all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods. Further, from time to time, DEFENDANTS failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements that provide the accurate amount of total hours worked, in violation of Cal. Lab. Code § 226(a)(2).

36. In addition to the violations described above, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

FIRST CAUSE OF ACTION

For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")

[Cal. Lab. Code §§ 2698, et seq.]

(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)

37. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

10 39. PLAINTIFF brings this Representative Action on behalf of the State of California with
11 respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by
12 DEFENDANTS during the PAGA PERIOD.

13 40. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the
14 AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the meaning of
15 Labor Code Section 2699(c).

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

19 42. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
20 Section 2699.3. By certified letter, return receipt requested, dated July 21, 2021, PLAINTIFF gave
21 written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANTS of
22 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories
23 to support the alleged violations. (See Exhibit 1).

24 43. As of September 24, 2021, more than sixty-five (65) days after serving the LWDA with
25 notice of DEFENDANTS' violations, the LWDA has not provided any notice by certified mail of its
26 intent to investigate the DEFENDANTS' alleged violations as mandated by Labor Code Section
27 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may
28 commence and is authorized to pursue this cause of action.

1 44. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to the
2 California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled the statute
3 of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of
4 limitation and repose for civil causes of action that are 180 days or less, of (b) October 1, 2020 for
5 statutes of limitation and repose for civil causes of action that exceed 180 days.

6 45. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
7 EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201,
8 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5,
9 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, in the following amounts:

10 a. For violation of Labor Code Sections 201, 202, 203, and 204, one
11 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period
12 for the initial violation and two hundred dollars (\$200) for AGGRIEVED
13 EMPLOYEE per pay period for each subsequent violation [penalty per
14 Labor Code Section 2699(f)(2)];

15 b. For violations of Labor Code Section 226(a), a civil penalty in the
16 amount of two hundred fifty dollars (\$250) for each AGGRIEVED
17 EMPLOYEE for any initial violation and one thousand dollars for each
18 subsequent violation [penalty per Labor Code Section 226.3];

19 c. For violations of Labor Code Sections 204, a civil penalty in the
20 amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE
21 for any initial violation and two hundred dollars (\$200) for AGGRIEVED
22 EMPLOYEE for each subsequent violation [penalty per Labor Code
23 Section 210];

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

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

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

9 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and
10 1199, a civil penalty in the amount of one hundred dollars (\$100) per
11 AGGRIEVED EMPLOYEE per pay period for the initial violation and two
12 hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period
13 for each subsequent violation [penalty per Labor Code Section].

14 2. For all provisions of the Labor Code for which civil penalty is not specifically provided,
15 Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each
16 AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for
17 each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the
18 AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in
19 connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).
20
21
22
23
24
25
26
27
28

///

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

- (a) For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to Labor Code § 2699, *et seq.*;
- (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act; and
- (c) For such other relief as the Court deems just and proper.

Dated: September 27, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

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

Dated: September 27, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

EXHIBIT 1



3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Tel: 619-599-8292
Fax: 619-599-8291
Toll Free: 1-888-498-6999
www.jcl-lawfirm.com
Jean-Claude Lapuyade, Esq.
jlapuyade@jcl-lawfirm.com

July 21, 2021

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

THE DAVEY TREE EXPERT COMPANY

c/o CT Corporation System
330 N Brand Blvd
Glendale CA, 91203

Via Certified Mail with Return Receipt No. 7021 0950 0001 6369 9811

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

This office represents JALIL HASIM (“Plaintiff”) and other aggrieved employees in a proposed class and representative action against THE DAVEY TREE EXPERT COMPANY (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff worked for Defendant in California from February 2021 to April 2021 as a non-exempt employee. While working for Defendant, Plaintiff was denied, among other things, compliant meal and rest breaks, minimum wages, regular wages and overtime wages.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him, and other similarly situated aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks, reimburse employees for required expenses, and accurate itemized wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff intends on representing the aggrieved employees, who are defined as all of Defendant’s current and former non-exempt and exempt California employees.

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

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

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

Very truly yours,
JCL LAW FIRM, APC



Jean-Claude Lapuyade, Esq.

Enclosure (1)

JEAN-CLAUDE LAPUYADE (SBN 248676)
JLAPUYADE@JCL-LAWFIRM.COM
JCL LAW FIRM, APC
3990 OLD TOWN AVENUE, SUITE C204
SAN DIEGO, CA 92110
TEL: (619) 599-8292 FAX: (619) 599-8291

SHANI O. ZAKAY (SBN 277924)
ZAKAY LAW GROUP, APLC
3990 OLD TOWN AVENUE, SUITE C204
SAN DIEGO, CA 92110
TEL: (619) 255-9047 FAX: (619) 404-9203

ATTORNEYS FOR PLAINTIFF

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

JALIL HASIM, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

THE DAVEY TREE EXPERT COMPANY, an
Ohio corporation; and DOES 1 through 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 OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
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 REIMBURSE PLAINTIFF FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
8. FAILURE TO PAY SICK PAY AT THE CORRECT RATE OF PAY IN VIOLATION OF CAL. LAB. CODE § 246, *et seq.*;
9. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203.

DEMAND FOR JURY TRIAL

Plaintiff JALIL HASIM (“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 THE DAVEY TREE EXPERT COMPANY (“DEFENDANT” and/or “DEFENDANTS”) is an Ohio corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Francisco, and provides professional tree and lawn care services.

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

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

jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

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

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

6. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee, paid on an hourly basis and entitled to overtime pay and legally compliant meal and rest periods from February 2021 to April 2021.

7. PLAINTIFF brings this Class Action under California Code of Civil Procedure § 382 on behalf of himself and on behalf of all of DEFENDANTS' current and former non-exempt California employees (the "CALIFORNIA CLASS") at any time during the period beginning four years from the date of the filing of this Complaint and ending on a date determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00). PLAINTIFF reserves the right to amend the following class definitions before the Court determines whether class certification is appropriate, or thereafter upon leave of Court:

8. PLAINTIFF brings this Class Action on behalf of himself and on behalf of the CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest periods or an additional hour of pay at the regular rate of compensation in lieu thereof in violation of

California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to provide accurate itemized wage statements in violation of California Labor Code Sections 226 and 226.3.

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

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

JURISDICTION AND VENUE

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

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

THE CONDUCT

13. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest period, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other

1 members of the CALIFORNIA CLASS for all time worked, and failed to issue to PLAINTIFF and the
2 members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other
3 things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time
4 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
5 purposefully avoid the accurate and full payment for all time worked as required by California law
6 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
7 comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
8 CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

9 **A. Meal Period Violations**

10 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
11 required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked, meaning
12 the time during which an employee is subject to the control of an employer, including all the time the
13 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD,
14 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS members to work without paying
15 them for all the time they were under DEFENDANTS' control. Specifically, as a result of
16 PLAINTIFF's demanding work requirements, and DEFENDANTS' under staffing, DEFENDANTS
17 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-
18 duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked
19 out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where
20 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA
21 CLASS Members forfeited minimum wage and overtime wages by regularly working without their
22 time being accurately recorded and without compensation at the applicable minimum wage and
23 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
24 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
25 records.

26 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
27 schedules, and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA
28 CLASS members were from time to time unable to take thirty (30) minute off duty meal breaks and

1 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS
2 Members were required from time to time to perform work as ordered by DEFENDANTS for more
3 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from
4 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-
5 duty meal period for some workdays in which these employees were required by DEFENDANTS to
6 work ten (10) hours of work from time to time. The nature of the work performed by the PLAINTIFF
7 and the members of the CALIFORNIA CLASS does not qualify for limited and narrowly construed
8 “on-duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other
9 CALIFORNIA CLASS Members were, from time to time, required to remain on the premises, on-duty,
10 and on-call. Further, DEFENDANTS from time to time required PLAINTIFF and the other
11 CALIFORNIA CLASS Members to carry cordless communication devices on them during meal
12 periods in order to answer to DEFENDANTS’ supervisors for work-related tasks. PLAINTIFF and
13 other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional
14 compensation and in accordance with DEFENDANTS’ strict corporate policy and practice.
15 DEFENDANTS failed to maintain adequate staffing levels while increasing the production levels for
16 each employee at the busy sites they provided landscape services for.

17 **B. Rest Period Violations**

18 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
19 CLASS Members were also required from time to time to work in excess of four (4) hours without
20 being provided ten (10) minute rest periods as a result of their rigorous work schedules and
21 DEFENDANTS’ inadequate staffing. Further, for the same reasons these employees were denied their
22 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
23 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
24 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
25 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were
26 provided with rest periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time
27 to time, required to remain on the premises, on-duty, and on-call. Further, DEFENDANTS from time
28 to time required PLAINTIFF and the other CALIFORNIA CLASS Members to carry cordless

communication devices on them during rest periods in order to answer to DEFENDANTS' supervisors for work-related tasks. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were always denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

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

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

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

19. The second component of PLAINTIFF'S and other CALIFORNIA CLASS members' compensation was DEFENDANTS' cash in lieu of benefits and non-discretionary incentive program that paid PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly basis with bonus and/or commission compensation when the employees met the various performance goals set by DEFENDANTS.

20. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, paid meal and rest period premium payments, and/or paid sick pay, and earned cash in lieu of benefits and/or non-discretionary bonus, DEFENDANTS failed to accurately include the cash in lieu of benefits and non-discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. Management and supervisors described

the incentive/bonus program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS members must be included in the “regular rate of pay.” The failure to do so has resulted in a systematic underpayment of overtime compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other CALIFORNIA CLASS members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time for non-employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in that workweek. DEFENDANTS’ conduct, as articulated herein, by failing to include the incentive compensation as part of the “regular rate of pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246.

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

D. Unreimbursed Business Expenses

22. DEFENDANTS as a matter of corporate policy, practice and procedure, intentionally, knowingly and systematically failed to reimburse and indemnify PLAINTIFF and the members of the CALIFORNIA CLASS or required business expenses they incurred in direct consequence of discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of

1 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
2 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
3 unlawful."

4 23. From time-to-time during the CLASS PERIOD, PLAINTIFF and the members of the
5 CALIFORNIA CLASS were required by DEFENDANTS to use their own personal cellular phones as
6 a result of and in furtherance of their job duties as employees for DEFENDANTS. But for the use of
7 their personal cell phones, PLAINTIFF and the members of the CALIFORNIA CLASS could not
8 complete their essential job duties. Notwithstanding, DEFENDANTS did not reimburse or indemnify
9 PLAINTIFF or the members of the CALIFORNIA CLASS for the cost associated with the use of their
10 personal cellular phones for DEFENDANTS' benefit. As a result, in the course of their employment
11 with DEFENDANTS, PLAINTIFF and the members of the CALIFORNIA CLASS incurred
12 unreimbursed business expenses which included, but were not limited to, costs related to the use of
13 their personal cellular phones, all on behalf of and for the benefit of DEFENDANTS.

14 **E. Wage Statement Violations**

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

23 25. From time to time during the CLASS PERIOD, when PLAINTIFF and other
24 CALIFORNIA CLASS Members missed meal and rest breaks, were paid inaccurate missed meal and
25 rest period premiums, were paid overtime in the same pay period where they earned cash in lieu of
26 benefits or non-discretionary incentive award, or were not paid for all hours worked, DEFENDANTS
27 also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete
28 and accurate wage statements which failed to show, among other things, all applicable hourly rates in

1 effect during the pay period and the corresponding amount of time worked at each hourly rate, correct
2 rates of pay for penalty payments or missed meal and rest periods. Further, from time to time,
3 DEFENDANTS failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS
4 with wage statements that provide the accurate amount of total hours worked, in violation of Cal. Lab.
5 Code § 226(a)(2).

6 26. In addition to the violations described above, DEFENDANTS, from time to time, failed
7 to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply
8 with Cal. Lab. Code § 226. As a result, DEFENDANTS issued PLAINTIFF and the other members of
9 the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
10 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional
11 payroll error due to clerical or inadvertent mistake.

12 **F. CLASS ACTION ALLEGATIONS**

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

17 28. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
18 deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid
19 minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal
20 and rest period policies, failure to separately compensate rest periods, failure to separately compensate
21 for all non-productive time, failure to provide accurate itemized wage statements, failure to maintain
22 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

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

24 30. Common questions of law and fact regarding DEFENDANTS' conduct, including but not
25 limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate
26 the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of
27 compensation for missed meal and rest period premiums, failing to provide legally compliant meal and
28 rest periods, failure to provide accurate itemized wage statements accurate, and failure ensure they are

1 paid at least minimum wage and overtime, exist as to all members of the class and predominate over
2 any questions affecting solely any individual members of the class. Among the questions of law and fact
3 common to the class are:

- 4 a. Whether DEFENDANTS maintained legally compliant meal period
5 policies and practices;
- 6 b. Whether DEFENDANTS maintained legally compliant rest period
7 policies and practices;
- 8 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
9 CALIFORNIA CLASS Members accurate premium payments for missed
10 meal and rest periods;
- 11 d. Whether DEFENDANTS failed to pay PLAINTIFF and the
12 CALIFORNIA CLASS Members accurate overtime wages;
- 13 e. Whether DEFENDANTS failed to pay PLAINTIFF and the
14 CALIFORNIA CLASS Members accurate sick pay;
- 15 f. Whether DEFENDANTS failed to pay PLAINTIFF and the
16 CALIFORNIA CLASS Members at least minimum wage for all hours
17 worked;
- 18 g. Whether DEFENDANTS issued legally compliant wage statements;
- 19 h. Whether DEFENDANTS committed an act of unfair competition by
20 systematically failing to record and pay PLAINTIFF and the other members
21 of the CALIFORNIA CLASS for all time worked;
- 22 i. Whether DEFENDANTS committed an act of unfair competition by
23 systematically failing to record all meal and rest breaks missed by
24 PLAINTIFF and other CALIFORNIA CLASS members, even though
25 DEFENDANTS enjoyed the benefit of this work, required employees to
26 perform this work and permits or suffers to permit this work; and
- 27 j. Whether DEFENDANTS committed an act of unfair competition in
28 violation of the UCL, by failing to provide the PLAINTIFF and the other

members of the CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

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

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

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

36. There is a strong community of interest among PLAINTIFF and the members of the CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

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

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

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

b. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

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

FIRST CAUSE OF ACTION

For Unlawful Business Practices

[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and 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 Complaint.

41. DEFENDANTS are “person[s]” 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 reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA

1 CLASS Members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
2 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
3 “UCL”), by engaging and continuing to engage in business practices which violates California law,
4 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
5 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512,
6 1194, 1197, 1197.1, 1198, & 2802, for which this Court should issue declaratory and other equitable
7 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
8 held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

25 47. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful, unfair and
26 deceptive in that DEFENDANTS’ uniform policies, practices and procedures failed to, *inter alia*,
27 provide the legally mandated meal and rest periods, the required accurate amount of compensation for
28 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage

statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal. Labor Code.

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

49. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off duty paid rest period was not timely provided as required by law.

50. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately calculated overtime and missed meal and rest periods premiums.

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

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

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

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

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

SECOND CAUSE OF ACTION

For Failure to Pay Overtime Compensation

[Cal. Lab. Code §§ 510, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

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

57. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period beginning four years prior to the filing of the Complaint and the present (“LABOR CLASS PERIOD”) bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

61. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked or were not accurately compensated for all overtime hours worked.

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

63. In committing these violations of the California Labor Code, DEFENDANTS inaccurately calculated the amount of overtime worked and the applicable overtime rates and consequently underpaid the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

64. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein, PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for all overtime worked.

65. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude the causes of action contained herein this Complaint. Rather, the PLAINTIFF brings this Action on

1 behalf of himself and the CALIFORNIA CLASS based on DEFENDANTS' violations of non-
2 negotiable, non-waivable rights provided by the State of California.

3 66. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the
4 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure
5 to pay all earned wages.

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

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

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

23 70. In performing the acts and practices herein alleged in violation of California labor laws,
24 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
25 them with the requisite overtime compensation, DEFENDANTS acted and continues to act intentionally,
26 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
27 with a conscious of and utter disregard for their legal rights, or the consequences to them, and with the
28 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury

in order to increase company profits at the expense of these employees

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

THIRD CAUSE OF ACTION

For Failure to Pay Minimum Wages

[Cal. Lab. Code §§ 1194, 1197 and 1197.1]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

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

73. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the LABOR CLASS PERIOD.

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

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

76. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including

1 minimum wage compensation and interest thereon, together with the costs of suit.

2 77. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
3 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
4 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
5 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
6 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to
7 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members
8 of the CALIFORNIA CLASS.

9 78. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
10 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
11 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
12 of the CALIFORNIA CLASS in regard to minimum wage pay.

13 79. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
14 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF
15 and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid
16 the payment of all earned wages, and other benefits in violation of the California Labor Code, the
17 Industrial Welfare Commission requirements and other applicable laws and regulations.

18 80. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
19 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum
20 wage compensation for their time worked for DEFENDANTS.

21 81. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the
22 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure
23 to pay all earned wages.

24 82. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation
25 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,
26 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to
27 suffer an economic injury in amounts which are presently unknown to them and which will be
28 ascertained according to proof at trial.

83. DEFENDANTS knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

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

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

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

86. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and

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

87. During the LABOR CLASS PERIOD, from time to time, DEFENDANTS failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being relieved of all their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records from time to time. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-duty meal period in some workdays in which these employees were required by DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

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

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

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

90. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and

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

91. During the LABOR CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS members were from time to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

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

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

SIXTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

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

95. 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.

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

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

SEVENTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code §§ 226 and 226.2]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

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

99. Cal. Labor Code § 226 provides that an employer must furnish employees with an

“accurate itemized” statement in writing showing:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

100. During the LABOR CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3) gross wages earned and (4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of California Labor Code Section 226. Further, from time to time, DEFENDANTS failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements that provide the accurate amount of total hours worked, in violation of Cal. Lab. Code § 226(a)(2).

101. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §

226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY SICK PAY AT THE CORRECT RATE OF PAY

(Cal. Lab. Code § 246, *et seq.*)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all DEFENDANT)

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

103. Cal. Labor Code Sections 246(l)(1) mandates that “[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.”

104. From time-to-time, during the PLAINTIFF and other members of the CALIFORNIA CLASS were compensated at an hourly rate plus cash in lieu of benefits and/or bonuses. As a matter of law, the cash in lieu of benefits and/or bonus compensation received by PLAINTIFF and other members of the CALIFORNIA CLASS must be included in the “regular rate of pay.”

105. From time-to-time during the CLASS PERIOD, in those pay periods where PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS earned hourly compensation and either cash in lieu of benefits or non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to properly calculate the regular rate of pay for purposes of compensating paid

1 sick time by omitting cash in lieu of benefits and/or non-discretionary incentive pay from the regular
2 rate of pay.

3 106. DEFENDANT's uniform policy and practice of omitting cash in lieu of benefits and/or
4 non-discretionary bonuses from the regular rate of pay for purposes of paying paid sick pay, resulted in
5 the underpayment of sick pay wages to PLAINTIFF and other members of the CALIFORNIA
6 CLASS. PLAINTIFF and other members of the CALIFORNIA CLASS therefore request recovery of
7 all unpaid wages, including sick pay wages, according to proof, interest, statutory costs, as well as the
8 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
9 Labor Code and/or other applicable statutes. To the extent sick pay is determined to be owed to other
10 members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment,
11 DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals
12 are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
13 herein on behalf of other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT'S
14 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
15 members of the CALIFORNIA CLASS are entitled to seek and recover statutory costs.

16 **NINTH CAUSE OF ACTION**

17 **FAILURE TO PAY WAGES WHEN DUE**

18 **(Cal Lab. Code §§201, 202, 203)**

19 **((By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS))**

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

22 108. Cal. Lab. Code § 200 provides that:

23 As used in this article:(a) "Wages" includes all amounts for labor performed
24 by employees of every description, whether the amount is fixed or
25 ascertained by the standard of time, task, piece, Commission basis, or other
26 method of calculation. (b) "Labor" includes labor, work, or service whether
27 rendered or performed under contract, subcontract, partnership, station plan,
28 or other agreement if the labor to be paid for is performed personally by the
person demanding payment.

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

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

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

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

112. Cal. Lab. Code § 203 provides:

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

113. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest breaks, as required by law.

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

///

///

///

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

D) Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS;

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

1. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;

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

3. Meal and rest period compensation pursuant to California Labor Code Sections 226.7, 512 and the applicable IWC Wage Order;

4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and,

2. 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 cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

Dated: September 27, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: Jean-Claude Lapuyade
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

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

Dated: September 27, 2021

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: Jean-Claude Lapuyade
Attorneys for PLAINTIFF