

SUMMONS
(CITACION JUDICIAL)

SUM-100

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

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

4/8/2024

By: Gaspar Ambriz Medina, DEPUTY

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

AC PRO INC., a California corporation; MATERIAL SUPPLY INC., an unknown business entity;
and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ALSHA JACKSON, an individual, in his representative capacity on behalf of himself, the State of California, and fellow Aggrieved Employees,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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.sucorte.ca.gov), 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.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Bernardino Superior Court

San Bernardino Justice Center - 247 West 3rd Street, San Bernardino, CA 92415

CASE NUMBER:
(Número del Caso):

CIVSB2407673

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. T: (619)599-8292 JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 4/8/2024

(Fecha)

Clerk, by

(Secretario)

/s/ Gaspar Ambriz Medina

, Deputy

(Adjunto)

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

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

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

3/6/2024 11:40 AM

By: Gaspar Ambriz Medina, DEPUTY

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ALSHA JACKSON, an individual, in his
representative capacity on behalf of himself, the
State of California, and fellow Aggrieved
Employees,

Plaintiff,

v.

AC PRO INC., a California corporation;
MATERIAL SUPPLY INC., an unknown
business entity; and DOES 1-50, Inclusive,

Defendants.

Case No: CIVSB2407673

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1) VIOLATIONS OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ.

1 PLAINTIFF ALSHA JACKSON (“PLAINTIFF”), an individual, in his representative
2 capacity on behalf of himself, the State of California, and fellow current and former AGGRIEVED
3 EMPLOYEES, defined *infra*, against AC PRO INC., a California corporation and MATERIAL
4 SUPPLY INC., an unknown business entity (“DEFENDANTS”), alleges on information and belief,
5 except for his own acts and knowledge which are based on personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against DEFENDANTS seeking only to recover
8 PAGA civil penalties for himself, and on behalf of all current and former aggrieved employees
9 that worked for DEFENDANTS. PLAINTIFF does **not seek to recover anything other than**
10 **penalties as permitted by California Labor Code § 2699.** To the extent that statutory violations
11 are mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
12 damages for those violations in this action, but simply the civil penalties permitted by California
13 Labor Code § 2699.

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

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

21 4. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
22 decreased their employment-related costs by systematically violating California wage and hour
23 laws.

24 5. DEFENDANTS’ systematic pattern of wage and hour and IWC Wage Order
25 violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 26 a. Failure to provide compliant meal and rest periods;
- 27 b. Failure to allow employees to take duty-free meal and rest periods;
- 28 c. Failure to pay all minimum, sick pay, regular and overtime wages;
- d. Failure to correctly calculate the regular rate of pay;

- e. Failure to pay within seven (7) days of the close of payroll;
- f. Failure to pay for all hours worked;
- g. Failure to maintain true and accurate records;
- h. Failure to reimburse for required business expenses;
- i. Failure to provide accurate itemized wage statements; and
- j. Failure to timely pay wages due during, and upon termination of employment.

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

7. PLAINTIFF reserves the right to name additional representatives throughout the State of California.

THE PARTIES

8. Defendant AC PRO INC. (“Defendant AC Pro”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

9. Defendant MATERIAL SUPPLY INC. (“Defendant Material Supply”) is an unknown business entity that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

10. Defendant AC Pro and Defendant Material Supply were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

11. DEFENDANTS are suppliers, distributors, and retailers of HVAC appliances throughout the state of California, including in the county of San Bernardino where PLAINTIFF worked.

12. PLAINTIFF was employed by DEFENDANTS in California from January of 2023 to July of 2023 as a non-exempt employee, paid on an hourly basis and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

1 13. PLAINTIFF brings this action in his representative capacity on behalf of the State
2 of California and on behalf of all non-exempt employees who worked for DEFENDANTS in
3 California between December 29, 2022, and the present (“PAGA PERIOD”).

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

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

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

16 17. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively
17 “DEFENDANTS”), were PLAINTIFF’S employers or persons acting on behalf of PLAINTIFF’S
18 employer, within the meaning of California Labor Code § 558, who violated or caused to be
19 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
20 hours and days of work in any order of the Industrial Welfare Commission and, as such, are
21 subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all
22 relevant times.

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

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1 the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
2 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

3 **A. Meal Period Violations**

4 22. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
5 required to pay PLAINTIFF and The AGGRIEVED EMPLOYEES for all their time worked,
6 meaning the time during which an employee is subject to the control of an employer, including
7 all the time the employee is suffered or permitted to work. From time to time during the PAGA
8 PERIOD, DEFENDANT required PLAINTIFF and The AGGRIEVED EMPLOYEES to work
9 without paying them for all the time they were under DEFENDANT's control. Specifically,
10 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
11 PLAINTIFF'S off-duty meal break. Indeed, there were many days where PLAINTIFF did not
12 even receive a partial lunch. As a result, the PLAINTIFF and the AGGRIEVED EMPLOYEES
13 forfeited minimum wage and overtime compensation by regularly working without their time
14 being accurately recorded and without compensation at the applicable minimum wage and
15 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and the
16 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT's business
17 records.

18 23. From time to time during the PAGA PERIOD, as a result of their rigorous work
19 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and the AGGRIEVED
20 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and
21 were not fully relieved of duty for their meal periods. PLAINTIFF and the AGGRIEVED
22 EMPLOYEES are required to perform work as ordered by DEFENDANT for more than five (5)
23 hours during some shifts without receiving a meal break. Further, DEFENDANT fails to provide
24 PLAINTIFF and The AGGRIEVED EMPLOYEES with a second off-duty meal period for some
25 workdays in which these employees are required by DEFENDANT to work ten (10) hours of
26 work. The nature of the work performed by PLAINTIFF and the AGGRIEVED EMPLOYEES
27 does not qualify for the limited and narrowly construed "on-duty" meal period exception. When
28 they were provided with meal periods, PLAINTIFF and the AGGRIEVED EMPLOYEES were,

1 from time to time, required to remain on premises, on duty and on call. DEFENDANT's failure
2 to provide PLAINTIFF and AGGRIEVED EMPLOYEES with legally required meal breaks is
3 evidenced by DEFENDANT's business records. PLAINTIFF and the AGGRIEVED
4 EMPLOYEES therefore forfeit meal breaks without additional compensation and in accordance
5 with DEFENDANT's strict corporate policy and practice.

6 **B. Rest Period Violations**

7 24. During the PAGA PERIOD, from time to time, PLAINTIFF and AGGRIEVED
8 EMPLOYEES were also required to work in excess of four (4) hours without being provided ten
9 (10) minute rest periods. Further, these employees were denied their first rest periods of at least
10 ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second
11 rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)
12 hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked
13 of ten (10) hours or more. When they did have an opportunity to take their rest breaks,
14 PLAINTIFF and the AGGRIEVED EMPLOYEES were often interrupted and required by
15 DEFENDANTS to work during their rest breaks. When they were provided with rest breaks,
16 PLAINTIFF and the AGGRIEVED EMPLOYEES were, from time to time, required to remain
17 on premises, on duty and/or on call. PLAINTIFF and the AGGRIEVED EMPLOYEES were also
18 not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and
19 DEFENDANT's inadequate staffing, PLAINTIFF and the AGGRIEVED EMPLOYEES were
20 from time to time denied their proper rest periods by DEFENDANT and DEFENDANT's
21 managers.

22 **C. Unreimbursed Business Expenses**

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

§ 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."

26. In the course of their employment, DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to use their personal cell phones and vehicles as a result of and in furtherance of their job duties, including but not limited to receiving and/or responding to work-related communications and performing work-related duties. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and AGGRIEVED EMPLOYEES for the use of their personal cell phones and vehicles. As a result, in the course of their employment with DEFENDANT, the PLAINTIFF and AGGRIEVED EMPLOYEES incurred unreimbursed business expenses that included, but were not limited to, costs related to the use of their personal cell phones and vehicles.

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

27. During the PAGA PERIOD, from time-to-time DEFENDANT failed and continues to fail to accurately pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all hours worked.

28. During the PAGA PERIOD, from time-to-time DEFENDANT required PLAINTIFF and the AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work. This resulted in PLAINTIFF and the AGGRIEVED EMPLOYEES having to work while off-the-clock.

29. DEFENDANT directed and directly benefited from the undercompensated off-the-clock work performed by PLAINTIFF and the AGGRIEVED EMPLOYEES.

30. DEFENDANT controlled the work schedules, duties, and protocols, applications, assignments, and employment conditions of PLAINTIFF and the AGGRIEVED EMPLOYEES.

31. DEFENDANT was able to track the amount of time PLAINTIFF and the AGGRIEVED EMPLOYEES spent working; however, DEFENDANT failed to document, track, or pay PLAINTIFF and the AGGRIEVED EMPLOYEES all wages earned and owed for all the work they performed.

1 32. PLAINTIFF and the AGGRIEVED EMPLOYEES were non-exempt employees,
2 subject to the requirements of the California Labor Code.

3 33. DEFENDANT's policies and practices deprived PLAINTIFF and the
4 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for
5 the off-the-clock work activities. Because PLAINTIFF and the AGGRIEVED EMPLOYEES
6 typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
7 DEFENDANT's policies and practices also deprived them of overtime pay.

8 34. DEFENDANT knew or should have known that PLAINTIFF and the
9 AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

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

15 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
16 **and Redeemed Sick Pay**

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

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

1 38. The second component of PLAINTIFF’S and AGGRIEVED EMPLOYEES’
2 compensation was DEFENDANTS’ non-discretionary incentive program that paid PLAINTIFF
3 and AGGRIEVED EMPLOYEES incentive wages based on their performance for
4 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
5 basis with bonus compensation when the employees met the various performance goals set by
6 DEFENDANTS.

7 39. However, from-time-to-time, when calculating the regular rate of pay, in those pay
8 periods where PLAINTIFF and AGGRIEVED EMPLOYEES worked overtime, double time,
9 paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
10 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
11 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked
12 rather than just all non-overtime hours worked. Management and supervisors described the
13 incentive/bonus program to potential and new employees as part of the compensation package.
14 As a matter of law, the incentive compensation received by PLAINTIFF and AGGRIEVED
15 EMPLOYEES must be included in the “regular rate of pay.” The failure to do so has resulted in
16 a systematic underpayment of overtime and double time compensation, meal and rest period
17 premiums, and redeemed sick pay to PLAINTIFF and AGGRIEVED EMPLOYEES by
18 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
19 for non-employees shall be calculated in the same manner as the regular rate of pay for the
20 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
21 actually works overtime in that workweek. DEFENDANTS’ conduct, as articulated herein, by
22 failing to include the incentive compensation as part of the “regular rate of pay” for purposes of
23 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
24 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

25 40. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
27 matter of company policy, practice, and procedure, intentionally and knowingly failed to
28 compensate PLAINTIFF and AGGRIEVED EMPLOYEES at the correct rate of pay for all

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

8 **F. Wage Statement Violations**

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

17 42. From time to time during the PAGA PERIOD, when PLAINTIFF and the
18 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
19 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
20 to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with complete and accurate wage
21 statements which failed to show the complete requirements under California Labor Code sections
22 226(a)(1)-(9), including but not limited to, all deductions, the total hours worked and all applicable
23 hourly rates in effect during the pay period, and the corresponding amount of time worked at each
24 hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

25 43. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
26 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with Cal.
27 Lab. Code § 226(a)(1)-(9).

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1 44. As a result, DEFENDANT issued PLAINTIFF and the AGGRIEVED
2 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's
3 violations are knowing and intentional, were not isolated due to an unintentional payroll error due
4 to clerical or inadvertent mistake.

5 **G. Unlawful Rounding Practices**

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

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

24 **H. Timekeeping Manipulation**

25 47. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
26 immutable timekeeping system to accurately record and pay PLAINTIFF and other
27 AGGRIEVED EMPLOYEES for the actual time PLAINTIFF and other AGGRIEVED
28 EMPLOYEES worked each day, including regular time, overtime hours, sick pay, meal and rest

1 breaks. As a result, DEFENDANTS were able to and did in fact, unlawfully, and unilaterally alter
2 the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and other
3 AGGRIEVED EMPLOYEES in order to avoid paying these employees for all hours worked,
4 applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest
5 breaks.

6 48. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES, from time-to-
7 time, forfeited time worked by working without their time being accurately recorded and without
8 compensation at the applicable pay rates.

9 49. The mutability of the timekeeping system also allowed DEFENDANTS to alter
10 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
11 timekeeping system so as to create the appearance that PLAINTIFF and other AGGRIEVED
12 EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were not
13 at all times provided an off-duty meal break. This practice is a direct result of DEFENDANTS'
14 uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal
15 breaks each day or otherwise compensate them for missed meal breaks.

16 50. As a result, PLAINTIFF and AGGRIEVED EMPLOYEES forfeited wages due
17 them for all hours worked at DEFENDANTS' direction, control, and benefit for the time the
18 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
19 PLAINTIFF and other AGGRIEVED EMPLOYEES wages for all hours worked in accordance
20 with applicable law is evidenced by DEFENDANTS' business records.

21 **I. Violations for Untimely Payment of Wages**

22 51. Pursuant to California Labor Code section 204, PLAINTIFF and the
23 AGGRIEVED EMPLOYEES were entitled to timely payment of wages during their employment.
24 PLAINTIFF and the AGGRIEVED EMPLOYEES, from time to time, did not receive payment
25 of all wages, including, but not limited to, overtime wages, minimum wages, meal period
26 premium wages, and rest period premium wages within permissible time period.

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1 **J. Unlawful Deductions**

2 52. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
3 and AGGRIEVED EMPLOYEES’ pay without explanations and without authorization to do so
4 or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS
5 violated Labor Code § 221.

6 **K. Sick Pay Violations**

7 53. Cal. Labor Code Section 246 (a)(1) mandates that “An employee who, on or after
8 July 1, 2015, works in California for the same employer for 30 or more days within a year from
9 the commencement of employment is entitled to paid sick days as specified in this section.”
10 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.
11 From time to time, DEFENDANT failed to have a policy or practice in place that provided
12 PLAINTIFF and the AGGRIEVED EMPLOYEES with sick days and/or paid sick leave.

13 54. California Labor Code Section 246(i) requires an employer to furnish its
14 employees with written wage statements setting forth the amount of paid sick leave available.
15 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
16 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements setting forth the
17 amount of paid sick leave available.

18 55. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
19 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
20 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
21 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
22 provide PLAINTIFF with a second off-duty meal period each workday in which DEFENDANT
23 required him to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF with a
24 rest break, they required PLAINTIFF to remain on premises, on-duty, and on-call for the rest
25 break. DEFENDANT policy caused PLAINTIFF to remain on premises, on-call, and on-duty
26 during what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal
27 and rest breaks without additional compensation and in accordance with DEFENDANT’S strict
28 corporate policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs

1 that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse
2 PLAINTIFF for required business expenses related to the use of his personal cell phone and
3 vehicle in violation of Cal. Lab. Code § 2802. To date, DEFENDANT has not fully paid
4 PLAINTIFF the minimum, overtime and double time compensation still owed to him or any
5 penalty wages owed to him under Cal. Lab. Code § 203. The amount in controversy for
6 PLAINTIFF individually does not exceed the sum or value of \$75,000.

7 **FIRST CAUSE OF ACTION**

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

9 **(Cal. Lab. Code §§2698 et seq.)**

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

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

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

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

25 59. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
26 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the
27 meaning of Labor Code Section 2699(c).

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

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

3 61. PLAINTIFF complied with the procedures for bringing suit specified in Labor
4 Code Section 2699.3. By certified letter, return receipt requested, dated December 29, 2023,
5 PLAINTIFF gave written notice to the Labor and Workforce Development Agency (“LWDA”)
6 and to DEENDANTS of the specific provisions of the Labor Code alleged to have been violated,
7 including the facts and theories to support the alleged violations. PLAINTIFF’s notice is attached
8 hereto as Exhibit #1.

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

15 63. PLAINTIFF, and such persons that may be added from time to time who satisfy
16 the requirements and exhaust the administrative procedures under the Private Attorney General
17 Act, bring this Representative Action on behalf of the State of California with respect to himself
18 and all employees who worked for Defendant in California (the "AGGRIEVED EMPLOYEES")
19 during the time period of December 29, 2022, until the present (“PAGA PERIOD”).

20 64. The policies, acts and practices heretofore described were and are an unlawful
21 business act or practice because DEFENDANTS (a) failed to pay AGGRIEVED EMPLOYEES
22 minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally
23 required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct
24 regular rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, and (e)
25 failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor
26 Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,
27 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197,
28 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare
Commission Wage Order(s), and thereby gives rise to statutory penalties as a result of such
conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code

1 Private Attorney General Act of 2004 as the representative of the State of California for the
2 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

3 65. For all provisions of the Labor Code for which civil penalty is not specifically
4 provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars
5 (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two
6 hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent
7 violation. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of
8 reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant
9 to Labor Code Section 2699(g)(1).

10 66. To the extent that any of the conduct and violations alleged herein did not affect
11 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
12 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
13 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
14 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor
15 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
16 committed by that employer."], Emphasis added, reh'g denied (June 13, 2018).)

17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

19 1. For reasonable attorney's fees and costs of suit to the extent permitted by law,
20 including pursuant to Labor Code § 2699, *et seq.*;

21 2. For civil penalties to the extent permitted by law pursuant to the Labor Code under
22 the Private Attorneys General Act; and

23 For such other relief as the Court deems just and proper.

24 DATED: March 6, 2024

25 **JCL LAW FIRM, APC**

26 By: 

27 Jean-Claude Lapuyade
28 Attorney for PLAINTIFF

EXHIBIT 1

December 29, 2023

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

AC PRO INC.

c/o Clark & Trevithick, A Professional Corporation
445 S. Figueroa Street, 18th Floor
Los Angeles, CA 90071

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0951 2766 67

MATERIAL SUPPLY INC.

c/o Clark & Trevithick, A Professional Corporation
445 S. Figueroa Street, 18th Floor
Los Angeles, CA 90071

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0951 2766 74

c/o Registered Agent

11700 Industry Ave.

Fontana, CA 92337

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0951 2766 81

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff ALSHA JACKSON ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant AC PRO INC. ("Defendant AC Pro") and Defendant MATERIAL SUPPLY INC. ("Defendant Material Supply") (hereinafter, collectively, "Defendants"). Plaintiff was employed by Defendants from January of 2023 to July of 2023, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to him and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198,

1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant AC Pro and/or Defendant Material Supply in California during the relevant claim period.

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

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

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

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

Very truly yours,
JCL LAW FIRM, APC

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

Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
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ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ALSHA JACKSON, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

AC PRO INC., a California corporation;
MATERIAL SUPPLY INC., an unknown
business entity; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

- 1 6) FAILURE TO PROVIDE WAGES WHEN
2 DUE IN VIOLATION OF CAL. LAB.
3 CODE §§ 201, 202 AND 203;
4 7) FAILURE TO PROVIDE ACCURATE
5 ITEMIZED STATEMENTS IN
6 VIOLATION OF CAL. LAB. CODE § 226;
7 8) FAILURE TO REIMBURSE EMPLOYEES
8 FOR REQUIRED EXPENSES IN
9 VIOLATION OF CAL. LAB. CODE § 2802.

10 **DEMAND FOR A JURY TRIAL**

11 PLAINTIFF ALSHA JACKSON (“PLAINTIFF”), an individual, on behalf of himself and
12 all other similarly situated current and former employees, allege on information and belief, except
13 for his own acts and knowledge which are based on personal knowledge, the following:

14 **PRELIMINARY ALLEGATIONS**

15 1. Defendant AC PRO INC. (“Defendant AC Pro”) is a California corporation that at
16 all relevant times mentioned herein conducted and continues to conduct substantial and regular
17 business throughout California.

18 2. Defendant MATERIAL SUPPLY INC. (“Defendant Material Supply”) is an
19 unknown business entity that at all relevant times mentioned herein conducted and continues to
20 conduct substantial and regular business throughout California.

21 3. Defendant AC Pro and Defendant Material Supply were the joint employers of
22 PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company
23 PLAINTIFF performed work for respectively and are therefore jointly responsible as employers
24 for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

25 4. DEFENDANTS are suppliers, distributors, and retailers of HVAC appliances
26 throughout the state of California, including in the county of San Bernardino where PLAINTIFF
27 worked.

28 5. PLAINTIFF was employed by DEFENDANTS in California from January of 2023
to July of 2023 as a non-exempt employee, paid on an hourly basis and entitled to the legally
required meal and rest periods and payment of minimum and overtime wages due for all time
worked.

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

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

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

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

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

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

20 12. DEFENDANT's uniform policies and practices alleged herein were unlawful,
21 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
22 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

23 13. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
24 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
25 other members of the CALIFORNIA CLASS who has been economically injured by
26 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
27 relief.

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

3 **A. Meal Period Violations**

4 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
5 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
6 meaning the time during which an employee is subject to the control of an employer, including
7 all the time the employee is suffered or permitted to work. From time to time during the CLASS
8 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
9 without paying them for all the time they were under DEFENDANT's control. Specifically,
10 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
11 PLAINTIFF'S off-duty meal break. Indeed, there were many days where PLAINTIFF did not
12 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
13 Members forfeited minimum wage and overtime compensation by regularly working without their
14 time being accurately recorded and without compensation at the applicable minimum wage and
15 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
16 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
17 records.

18 18. From time to time during the CLASS PERIOD, as a result of their rigorous work
19 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
20 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
21 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
22 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
23 more than five (5) hours during some shifts without receiving a meal break. Further,
24 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second
25 off-duty meal period for some workdays in which these employees are required by DEFENDANT
26 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other
27 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed "on-
28 duty" meal period exception. When they were provided with meal periods, PLAINTIFF and other

CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call. DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by DEFENDANT's business records. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

B. Rest Period Violations

19. From time to time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and DEFENDANT's inadequate staffing. Further, for the same reasons, 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 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, 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. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or on call. 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 and DEFENDANT's inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

C. Wage Statement Violations

20. California Labor Code Section 226 required an employer to furnish its employees and accurate itemized wage 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

1 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate by the employee.

3 21. From time to time during the CLASS PERIOD, when PLAINTIFF and other
4 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
5 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also
6 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
7 accurate wage statements which failed to show, among other things, all deductions, the total hours
8 worked and all applicable hourly rates in effect during the pay period, and the corresponding
9 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
10 meal and rest periods.

11 22. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
12 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
13 Cal. Lab. Code § 226.

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

18 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

19 24. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
20 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
21 for all hours worked.

22 25. During the CLASS PERIOD, from time-to-time DEFENDANT required
23 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
24 work while PLAINTIFF and other members of the CALIFORNIA CLASS were not clocked in.
25 This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work
26 while off-the-clock.

27 26. DEFENDANT directed and directly benefited from the undercompensated off-the-
28 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

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

4 28. DEFENDANT was able to track the amount of time PLAINTIFF and the other
5 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
6 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
7 wages earned and owed for all the work they performed.

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

10 30. DEFENDANT's policies and practices deprived PLAINTIFF and the other
11 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
12 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
13 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
14 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime
15 pay.

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

18 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
19 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and
20 benefit for the time spent working while off-the-clock. DEFENDANT's uniform policy and
21 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
22 hours worked in accordance with applicable law is evidenced by DEFENDANT's business
23 records.

24 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
25 **and Redeemed Sick Pay**

26 33. From time to time during the CLASS PERIOD, DEFENDANT failed and
27 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
28 Members for their overtime and double time hours worked, meal and rest period premiums, and

1 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
2 forfeited wages due to them for working overtime without compensation at the correct overtime
3 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
4 DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at
5 the correct rate for all overtime and double time worked, meal and rest period premiums, and
6 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT's business
7 records.

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

12 35. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
13 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
14 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
15 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
16 paid on an hourly basis with bonus compensation when the employees met the various
17 performance goals set by DEFENDANTS.

18 36. From-time-to-time, when calculating the regular rate of pay, in those pay periods
19 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double time,
20 paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
21 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
22 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked
23 rather than just all non-overtime hours worked. Management and supervisors described the
24 incentive/bonus program to potential and new employees as part of the compensation package.
25 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
26 CLASS members must be included in the "regular rate of pay." The failure to do so has resulted
27 in a systematic underpayment of overtime and double time compensation, meal and rest period
28 premiums, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS members by

1 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
2 for non-employees shall be calculated in the same manner as the regular rate of pay for the
3 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
4 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by
5 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of
6 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
7 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

19 **F. Unreimbursed Business Expenses**

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

1 even though unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful."

3 39. In the course of their employment, DEFENDANT required PLAINTIFF and other
4 CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell
5 phones and personal vehicles. Specifically, PLAINTIFF and other CALIFORNIA CLASS
6 Members were required to use their personal cell phones and vehicles. However, DEFENDANT
7 unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the
8 personal expenses incurred for the use of their personal cell phones and vehicles. As a result, in
9 the course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA
10 CLASS Members incurred unreimbursed business expenses that included, but were not limited
11 to, costs related to the use of their personal cell phones and vehicles, all on behalf of and for the
12 benefit of DEFENDANT.

13 **G. Unlawful Rounding Practices**

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

26 41. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
27 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'
28 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful

rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty meal break.

H. Timekeeping Manipulation

42. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an immutable timekeeping system to accurately record and pay PLAINTIFF and other members of the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal and rest breaks.

43. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and other members of the CALIFORNIA CLASS in order to avoid paying these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest break.

44. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from time-to-time, forfeited time worked by working without their time being accurately recorded and without compensation at the applicable pay rates.

45. The mutability of the timekeeping system also allowed DEFENDANTS to alter employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS' timekeeping system so as to create the appearance that PLAINTIFF and other members of the CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees were not at all times provided an off-duty meal break. This practice is a direct result of DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

46. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and benefit for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for

1 all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
2 records.

3 **I. Violations for Untimely Payment of Wages**

4 47. Pursuant to California Labor Code section 204, PLAINTIFF and the
5 CALIFORNIA CLASS members were entitled to timely payment of wages during their
6 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
7 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
8 meal period premium wages, and rest period premium wages within permissible time period.

9 48. Pursuant to Cal. Lab. Code § 201, "If an employer discharges an employee, the
10 wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant to
11 Cal. Lab. Code § 202, if an employee quits his or her employment, "his or her wages shall become
12 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
13 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
14 wages at the time of quitting." PLAINTIFF and the CALIFORNIA CLASS Members were, from
15 time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or
16 at the time of quitting, in violation of Cal. Lab. Code §§ 201 and 202.

17 49. As such, PLAINTIFF demands up to thirty days of pay as penalty for not timely
18 paying all wages due at time of termination for all CALIFORNIA CLASS Members whose
19 employment ended during the CLASS PERIOD.

20 **J. Sick Pay Violations**

21 50. Cal. Labor Code Section 246 (a)(1) mandates that "An employee who, on or after
22 July 1, 2015, works in California for the same employer for 30 or more days within a year from
23 the commencement of employment is entitled to paid sick days as specified in this section."
24 Further, Cal. Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.
25 From time to time, DEFENDANT failed to have a policy or practice in place that provided
26 PLAINTIFF and other members of the CALIFORNIA CLASS with sick days and/or paid sick
27 leave.

28 51. California Labor Code Section 246(i) requires an employer to furnish its

1 employees with written wage statements setting forth the amount of paid sick leave available.
2 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish
3 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
4 forth the amount of paid sick leave available.

5 **K. Unlawful Deductions**

6 52. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
7 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
8 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
9 DEFENDANTS violated Labor Code § 221.

10 53. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
11 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
12 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
13 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
14 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
15 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
16 with a rest break, they required PLAINTIFF to remain on premises, on-duty and on-call for the
17 rest break. DEFENDANT policy caused PLAINTIFF to remain on premises, on-call and on-duty
18 during what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal
19 and rest breaks without additional compensation and in accordance with DEFENDANT'S strict
20 corporate policy and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs
21 that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse
22 PLAINTIFF for required business expenses related to the use of his personal cell phone and PPE,
23 in violation of Cal. Lab. Code § 2802. To date, DEFENDANT has not fully paid PLAINTIFF the
24 minimum, overtime and double time compensation still owed to him or any penalty wages owed
25 to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF individually does
26 not exceed the sum or value of \$75,000.

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CLASS ACTION ALLEGATIONS

54. PLAINTIFF bring this Class Action on behalf of himself, and a California class defined as all persons who are or previously were employed by Defendant AC Pro and/or Defendant Material Supply and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CLASS PERIOD").

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

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

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

- a. Whether DEFENDANT maintained legally compliant meal period policies and practices;
- b. Whether DEFENDANT maintained legally compliant rest period policies and practices;

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- c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;
- d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- g. Whether DEFENDANT issued legally compliant wage statements;
- h. Whether DEFENDANT committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- i. Whether DEFENDANT committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- j. Whether DEFENDANT committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

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

59. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and PLAINTIFF has the same interests as the other members of the class.

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

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

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

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

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

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

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

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

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

21 70. By the conduct alleged herein, DEFENDANT has engaged and continues to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
25 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
26 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
27 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

27 77. By and through the unlawful and unfair business practices described herein,
28 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the

1 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
2 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
3 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
4 to unfairly compete against competitors who comply with the law.

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

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

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

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

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

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

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

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

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

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

18 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

19 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

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

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

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

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

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

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

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

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

26 104. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
27 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
28 overtime compensation for their time worked for DEFENDANT.

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

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

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

19 108. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
20 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
21 amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA
22 CLASS have suffered and will continue to suffer an economic injury in amounts which are
23 presently unknown to them, and which will be ascertained according to proof at trial.

24 109. DEFENDANT knew or should have known that PLAINTIFF and the other
25 members of the CALIFORNIA CLASS were undercompensated for their time worked.
26 DEFENDANT systematically elected, either through intentional malfeasance or gross
27 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
28 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF

1 and the other members of the CALIFORNIA CLASS the correct overtime wages for their
2 overtime worked.

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

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

21 **FOURTH CAUSE OF ACTION**

22 **Failure To Provide Required Meal Periods**

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

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

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

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

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

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

2 **Failure To Provide Required Rest Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

SIXTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code § 203)

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

120. 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.

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

As used in this article:

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

122. 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."

123. 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.

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

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1 125. Cal. Lab. Code § 203 provides:

2 If an employer willfully fails to pay, without abatement or reduction, in accordance with
3 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
4 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.

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

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

13 **SEVENTH CAUSE OF ACTION**

14 **Failure To Provide Accurate Itemized Statements**

15 **(Cal. Lab. Code § 226)**

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

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

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

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

- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

130. When DEFENDANT did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

131. In addition to the foregoing, DEFENDANT failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

132. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate.

1 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
2 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
3 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
4 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
5 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
6 of the CALIFORNIA CLASS herein).

7 **EIGHTH CAUSE OF ACTION**

8 **Failure To Reimburse Employees for Required Expenses**

9 **(Cal. Lab. Code §§ 2802)**

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

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

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

15 An employer shall indemnify his or her employee for all necessary expenditures or
16 losses incurred by the employee in direct consequence of the discharge of his or her
17 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.

18 135. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
19 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
20 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
21 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
22 members for expenses which included, but were not limited to, the use of their personal cell
23 phones and vehicles, all on behalf of and for the benefit of DEFENDANT. Specifically,
24 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use
25 their personal cell phones and vehicles to execute their essential job duties on behalf of
26 DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse
27 PLAINTIFF and the CALIFORNIA CLASS members for expenses resulting from the use of
28 their personal cellphones and vehicles for DEFENDANT within the course and scope of their

1 employment for DEFENDANT. These expenses were necessary to complete their principal job
2 duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
3 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
4 CALIFORNIA CLASS members, DEFENDANT failed to indemnify and reimburse
5 PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an employer is
6 required to do under the laws and regulations of California.

7 136. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred
8 by him and the CALIFORNIA CLASS members in the discharge of their job duties for
9 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the
10 statutory rate and costs under Cal. Lab. Code § 2802.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and
13 severally, as follows:

14 1. On behalf of the CALIFORNIA CLASS:

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

25 2. On behalf of the CALIFORNIA CLASS:

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

- 1 b. Compensatory damages, according to proof at trial, including compensatory
2 damages for overtime compensation due to PLAINTIFF and the other members of
3 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
4 thereon at the statutory rate;
- 5 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
6 the applicable IWC Wage Order;
- 7 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
8 which a violation occurs and one hundred dollars (\$100) per each member of the
9 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
10 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
11 violation of Cal. Lab. Code § 226
- 12 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
13 penalty from the due date thereof at the same rate until paid or until an action
14 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 15 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
16 CLASS incurred in the course of their job duties, plus interest, and costs of suit.
- 17 3. On all claims:
- 18 a. An award of interest, including prejudgment interest at the legal rate;
- 19 b. Such other and further relief as the Court deems just and equitable; and
- 20 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
21 including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.
22

23 DATED: December __, 2023

JCL LAW FIRM, APC

24 By: _____
25 Jean-Claude Lapuyade, Esq.
26 Attorney for PLAINTIFF
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DEMAND FOR A JURY TRIAL

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

DATED: December __, 2023

JCL LAW FIRM, APC

By: _____
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

EXHIBIT