

SUMMONS

(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

DUDEK, a California corporation; and DOES 1-50, Inclusive,

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

CHRISTOPHER PINOTTI, on behalf of the State of California, as a private attorney general,

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

9/13/2024 9:00:15 AM

Clerk of the Superior Court
By L. McAlister, Deputy Clerk

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 Diego Superior Court

Hall of Justice Courthouse - 330 West Broadway, San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

24CU009531C

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: 9/13/2024
(Fecha)

Clerk, by
(Secretario)

L. McAlister, Deputy
(Adjunto)

L. McAlister

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

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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

CHRISTOPHER PINOTTI, on behalf of the
State of California, as a private attorney general,

Plaintiff,

vs.

DUDEK, a California corporation; and DOES
1-50, Inclusive,

Defendant.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

9/5/2024 12:10:00 PM

Clerk of the Superior Court
By G. Lopez ,Deputy Clerk

Case No: 24CU009531C

REPRESENTATIVE ACTION
COMPLAINT FOR:

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

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

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against DUDEK (“DEFENDANT”) seeking only
8 to recover PAGA civil penalties on behalf of all current and former aggrieved employees that
9 worked for DEFENDANT. 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, but simply the civil penalties permitted by California Labor Code §
13 2699.

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

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANT’S
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 constructed as attempting to obtain any relief that would not be available in a PAGA- only action.

21 4. PLAINTIFF is not suing in his individual capacity; he is proceeding herein solely
22 under PAGA, on behalf of the State of California for all aggrieved employees, including himself
23 and other aggrieved employees. Nothing in this complaint should be construed as PLAINTIFF
24 suing his individual capacity.

25 **THE PARTIES**

26 5. DUDEK (“DEFENDANT”) is a California corporation that at all relevant times
27 mentioned herein conducted and continues to conduct substantial and regular business throughout
28 California.

1 6. DEFENDANT provides environmental and engineering services in California,
2 including in the county of San Diego, where PLAINTIFF worked.

3 7. PLAINTIFF was employed by DEFENDANT in California from July of 2022, to
4 January of 2024, as a non-exempt employee, paid an hourly basis, and entitled to the legally
5 required meal and rest periods and payment of minimum and overtime wages due for all time
6 worked.

7 8. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, brings this Representative Action on behalf of the State of California with respect to himself
10 and all non-exempt employees who worked for DEFENDANT in California ("AGGRIEVED
11 EMPLOYEES") during the time period of June 28, 2023, until a date as determined by the Court
12 (the "PAGA PERIOD").

13 9. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
14 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
15 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT'S
16 violation of California Labor Code §§ 201, 201.3, 202, 203, 204 *et seq.*, 210, 218.5, 218.6, 221,
17 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1,
18 1197.14, 1198, 1198.5, 1199, 2802, 2804, and the applicable Wage Order(s). Based upon the
19 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the
20 meaning of Labor Code § 2699, *et seq.*

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

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

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

11 12. State law provides that employees must be paid overtime and meal and rest break
12 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and the
13 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to
14 specific elements of an employee's performance.

15 13. The second component of PLAINTIFF's and the AGGRIEVED EMPLOYEES'
16 compensation is DEFENDANT'S non-discretionary incentive program that paid PLAINTIFF and
17 the AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANT.
18 The non-discretionary incentive program provided all employees paid on an hourly basis with
19 incentive compensation when the employees met the various performance goals set by
20 DEFENDANT. However, from time to time during the last year, when calculating the regular
21 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and the
22 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as part
23 of the employees' "regular rate of pay" for purposes of calculating overtime pay and meal and
24 rest break premium pay. Management and supervisors described the incentive program to
25 potential and new employees as part of the compensation package. As a matter of law, the
26 incentive compensation received by PLAINTIFF and the AGGRIEVED EMPLOYEES must be
27 included in the "regular rate of pay." The failure to do so has resulted in an underpayment of
28

1 overtime compensation and meal and rest break premiums to PLAINTIFF and the AGGRIEVED
2 EMPLOYEES by DEFENDANT.

3 14. During the last year, as a result of their rigorous work schedules, PLAINTIFF and
4 the AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off
5 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and the
6 AGGRIEVED EMPLOYEES were required from time to time to perform work as ordered by
7 DEFENDANT for more than five (5) hours during some shifts without receiving a meal break.
8 Further, DEFENDANT from time to time failed to provide PLAINTIFF and AGGRIEVED
9 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
10 were required by DEFENDANT to work ten (10) hours of work. Further, DEFENDANT required
11 PLAINTIFF and AGGRIEVED EMPLOYEES to maintain cordless communication devices on
12 them during meal periods in order to receive and respond to work-related communications.
13 DEFENDANT also engaged in the practice of rounding the meal period times to avoid paying
14 penalties to PLAINTIFF and the AGGRIEVED EMPLOYEES. PLAINTIFF and the
15 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation and
16 in accordance with DEFENDANT'S corporate policy and practice.

17 15. During the last year, from time-to-time, DEFENDANT failed to accurately record
18 and pay PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
19 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
20 was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked,
21 meaning the time during which an employee was subject to the control of an employer, including
22 all the time the employee was permitted or suffered to permit this work. DEFENDANT required
23 these employees to work off the clock without paying them for all the time they were under
24 DEFENDANT'S control. As such, DEFENDANT knew or should have known that PLAINTIFF
25 and the AGGRIEVED EMPLOYEES were under compensated for all time worked. As a result,
26 PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited time worked by working without
27 their time being accurately recorded and without compensation at the applicable minimum wage
28 and overtime wage rates. To the extent that the time worked off the clock does not qualify for

1 overtime premium payment, DEFENDANT failed to pay minimum wages for the time worked
2 off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

3 16. From time to time during the last year, when PLAINTIFF and other AGGRIEVED
4 EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed meal and rest
5 period premiums, or were not paid for all hours worked, DEFENDANT also failed to provide
6 PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage statements
7 which failed to show the complete requirements under California Labor Code sections 226(a)(1)-
8 (9), including but not limited to, all deductions, the total hours worked and all applicable hourly
9 rates in effect during the pay period and the corresponding amount of time worked at each hourly
10 rate, correct rates of pay for penalty payments or missed meal and rest periods.

11 17. In addition to the foregoing, DEFENDANT, from time to time during the last year,
12 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
13 that comply with Cal. Lab. Code § 226(a)(1)-(9).

14 18. 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 19. Pursuant to California Labor Code section 204, PLAINTIFF and the
19 AGGRIEVED EMPLOYEES were entitled to timely payment of wages during their employment.
20 PLAINTIFF and the AGGRIEVED EMPLOYEES, from time to time during the last year, did not
21 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
22 meal period premium wages, and rest period premium wages within permissible time period.

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

1 21. California Labor Code Section 246(i) requires an employer to furnish its
2 employees with written wage statements setting forth the amount of paid sick leave available.
3 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF
4 and the AGGRIEVED EMPLOYEES with wage statements setting forth the amount of paid sick
5 leave available.

6 22. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
7 the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time penalties
8 pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes and based
9 thereon alleges that such failure to pay sick pay at regular rate was willful, such that the
10 AGGRIEVED EMPLOYEES whose employment has separated are entitled to waiting time
11 penalties pursuant to Cal. Lab. Code Sections 201-203.

12 23. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to
13 collect or receive from an employee any part of wages theretofore paid by said employer to said
14 employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and the
15 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
16 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the deductions
17 from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES, and thereby
18 failed to pay these employees all wages due at each applicable pay period and upon termination.

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

25. Within the last year, in the course of their employment, PLAINTIFF and the AGGRIEVED EMPLOYEES were required by DEFENDANT to use their own personal cellular phones and personal vehicles as a result of and in furtherance of their job duties as employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones and personal vehicles for DEFENDANT'S benefit. As a result, in the course of their employment with DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but were not limited to, costs related to the use of their personal cellular phones and personal vehicles all on behalf of and for the benefit of DEFENDANT.

26. All of the conduct and violations alleged herein occurred during the PAGA PERIOD.

JURISDICTION AND VENUE

27. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10.

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

FIRST CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFF and Against All Defendants)

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

30. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the

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

8 31. PLAINTIFF, and such persons that may be added from time to time who satisfy
9 the requirements and exhaust the administrative procedures under the Private Attorney General
10 Act, brings this Representative Action on behalf of the State of California with respect to himself
11 and all non-exempt employees who worked for DEFENDANT in California ("AGGRIEVED
12 EMPLOYEES") during the time period of June 28, 2023, until a date as determined by the Court
13 (the "PAGA PERIOD").

14 32. On June 28, 2024, PLAINTIFF gave written notice by electronic mail to the Labor
15 and Workforce Development Agency (the "Agency") and by certified mail to the employer of the
16 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3.
17 See Exhibit #1, attached hereto and incorporated by this reference herein (PAGA Notice only
18 without draft complaint). The statutory waiting period for PLAINTIFF to add these allegations to
19 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
20 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the
21 State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

22 33. The policies, acts and practices heretofore described were and are an unlawful
23 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
24 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
25 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed to
26 pay overtime wages and sick pay wages, (e) failed to reimburse employees for required expenses,
27 and (f) failed to provide wages when due, all in violation of the applicable Labor Code sections
28 listed in Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,

1 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and
2 2804, and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
3 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor
4 Code Private Attorney General Act of 2004 as the representative of the State of California for the
5 illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.

6 **PRAYER FOR RELIEF**

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

9 1. On behalf of the State of California and with respect to all AGGRIEVED
10 EMPLOYEES:

11 A) Recovery of civil penalties as prescribed by the Labor Code Private
12 Attorneys General Act of 2004; and,

13 B) An award of attorneys' fees and cost of suit, as allowable under the law,
14 including, but not limited to, pursuant to Labor Code §2699.

15
16 Dated: September 5, 2024

17 **JCL LAW FIRM, APC**

18 By: 

19 Jean-Claude Lapuyade, Esq.
20 Attorney for PLAINTIFF
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¹ Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).

EXHIBIT 1

June 28, 2024

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

DUDEK

c/o Joseph Monaco
605 3rd Street
Encinitas, CA 92024

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 1756 9908 88

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 CHRISTOPHER PINOTTI ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant DUDEK ("Defendant"). Plaintiff was employed by Defendant from July of 2022 to January of 2024, 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. Defendant, 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, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant 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 in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and

theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

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

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

Sincerely 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.
Attorney at Law

JCL LAW FIRM, APC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

CHRISTOPHER PINOTTI, an individual, on
behalf of himself, and on behalf of all persons
similarly situated,

Plaintiff,

v.

DUDEK, a California corporation; and DOES
1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

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

5 **DEMAND FOR A JURY TRIAL**

6 PLAINTIFF CHRISTOPHER PINOTTI (“PLAINTIFF”), an individual, on behalf of
7 himself and all other similarly situated current and former employees, alleges on information and
8 belief, except for his own acts and knowledge which are based on personal knowledge, the
9 following:

10 **PRELIMINARY ALLEGATIONS**

11 1. Defendant DUDEK (“DEFENDANT” and/or “DEFENDANTS”) is a California
12 stock corporation that at all relevant times mentioned herein conducted and continues to conduct
13 substantial and regular business throughout California.

14 2. DEFENDANT provides, environmental and engineering services in California,
15 including in the county of San Diego, where PLAINTIFF worked.

16 3. PLAINTIFF was employed by DEFENDANTS in California from July of 2022 to
17 January of 2024 as a non-exempt employee, paid on an hourly basis, and entitled to the legally
18 required meal and rest periods and payment of minimum and overtime wages due for all time
19 worked.

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

26 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
27 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
28 the CLASS PERIOD caused by DEFENDANTS’ uniform policy and practice which failed to

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

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

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

26 8. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of the
27 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or
28 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision

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

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

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

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

17 **JURISDICTION AND VENUE**

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

22 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
23 Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ
24 the CALIFORNIA CLASS across California, including in this County, and committed the
25 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

26 **THE CONDUCT**

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

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

19 **A. Meal Period Violations**

20 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
21 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
22 meaning the time during which an employee is subject to the control of an employer, including
23 all the time the employee is suffered or permitted to work. From time to time during the CLASS
24 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
25 without paying them for all the time they were under DEFENDANTS' control. Specifically,
26 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
27 be PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
28 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS

1 Members forfeited minimum wage and overtime compensation by regularly working without their
2 time being accurately recorded and without compensation at the applicable minimum wage and
3 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
4 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
5 records.

6 16. From time to time during the CLASS PERIOD, as a result of their rigorous work
7 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
8 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
9 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
10 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANTS for
11 more than five (5) hours during some shifts without receiving a meal break. Further,
12 DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
13 second off-duty meal period for some workdays in which these employees are required by
14 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by
15 PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and
16 narrowly construed "on-duty" meal period exception. When they were provided with meal
17 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
18 required to remain on duty and on call. Further, DEFENDANTS from time to time required
19 PLAINTIFF and other CALIFORNIA CLASS Members to maintain cordless communication
20 devices in order to receive and respond to work-related communications during what was
21 supposed to be their off-duty meal breaks. DEFENDANTS' failure to provide PLAINTIFF and
22 the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
23 DEFENDANTS' business records. As a result of their rigorous work schedules and
24 DEFENDANTS' inadequate staffing, PLAINTIFF and other members of the CALIFORNIA
25 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
26 DEFENDANTS' strict corporate policy and practice.

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1 **B. Rest Period Violations**

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

19 **C. Unreimbursed Business Expenses**

20 18. DEFENDANTS 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 DEFENDANTS. 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
27 her employee for all necessary expenditures or losses incurred by the employee in direct
28 consequence of the discharge of his or her duties, or of his or her obedience to the directions of

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

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

14 **D. Wage Statement Violations**

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

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

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

3 22. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
4 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
5 Cal. Lab. Code § 226(a)(1)-(9).

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

10 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

11 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
12 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
13 for all hours worked.

14 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required
15 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
16 work, including but not limited to, gathering equipment, uploading data, and preparing for the
17 workday. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have
18 to work while off-the-clock.

19 26. DEFENDANTS directed and directly benefited from the undercompensated off-
20 the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

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

24 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
25 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
26 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
27 wages earned and owed for all the work they performed.

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

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

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

11 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
12 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and
13 benefit for the time spent working while off-the-clock, including but not limited to, gathering
14 equipment, uploading data, and preparing for the workday. DEFENDANTS' uniform policy and
15 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
16 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
17 records.

18 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
19 **and Redeemed Sick Pay**

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

1 34. State law provides that employees must be paid overtime at one-and-one-half times
2 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS Members were
3 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
4 employee’s performance.

5 35. The second component of PLAINTIFF’S and other CALIFORNIA CLASS
6 Members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
7 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
8 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
9 paid on an hourly basis with bonus compensation when the employees met the various
10 performance goals set by DEFENDANTS.

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

1 37. In violation of the applicable sections of the California Labor Code and the
2 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a
3 matter of company policy, practice, and procedure, intentionally and knowingly failed to
4 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
5 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
6 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain
7 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
8 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANTS, the
9 CLASS PERIOD should be adjusted accordingly.

10 **G. Unlawful Deductions**

11 38. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
12 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
13 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
14 DEFENDANTS violated Labor Code § 221.

15 **H. Timekeeping Manipulation**

16 39. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
17 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
18 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
19 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
20 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
21 unilaterally alter the time recorded in DEFENDANTS’ timekeeping system for PLAINTIFF and
22 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
23 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
24 missed rest breaks.

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

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

8 42. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
9 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
10 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and
11 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
12 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
13 records.

14 **I. Unlawful Rounding Practices**

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

27 44. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
28 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'

1 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful
2 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
3 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
4 receiving an off-duty meal break.

5 **J. Violations for Untimely Payment of Wages**

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

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

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

22 **K. Sick Pay Violations**

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

1 leave. As of January 1, 2024, Defendants failed to adhere to the law in that they failed to provide
2 and allow employees to use at least 40 hours or five days of paid sick leave per year.

3 49. California Labor Code Section 246(i) requires an employer to furnish its
4 employees with written wage statements setting forth the amount of paid sick leave available.
5 From time to time, DEFENDANTS violated Cal. Lab. Code § 246 by failing to furnish
6 PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements setting
7 forth the amount of paid sick leave available.

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

26 **CLASS ACTION ALLEGATIONS**

27 51. PLAINTIFF brings this Class Action on behalf of himself, and a California class
28 defined as all persons who are or previously were employed by DEFENDANT in California and

1 classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
2 beginning four (4) years prior to the filing of this Complaint and ending on the date as determined
3 by the Court (the “CLASS PERIOD”).

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

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

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

- 21 a. Whether DEFENDANT maintained legally compliant meal period policies and
22 practices;
- 23 b. Whether DEFENDANT maintained legally compliant rest period policies and
24 practices;
- 25 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
26 Members accurate premium payments for missed meal and rest periods;
- 27 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
28 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.

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

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

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

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

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

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

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

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

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

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

21 63. Class treatment provides manageable judicial treatment calculated to bring an
22 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
23 the conduct of 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 64. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

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

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

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

21 67. By the conduct alleged herein, DEFENDANTS have engaged and continue 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, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
25 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
26 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
27 constitute unfair competition, including restitution of wages wrongfully withheld.

28 68. By the conduct alleged herein, DEFENDANTS’ 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 this Court should issue equitable and injunctive relief pursuant to Section 17203

1 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 69. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
4 fraudulent in that DEFENDANTS' 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, failed to pay minimum and overtime wages owed, and failed to reimburse all
7 necessary business expenses incurred, due to a systematic business practice that cannot be
8 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
9 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
10 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
11 restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

7 87. As a direct result of DEFENDANTS' 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 DEFENDANTS.

10 88. 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 89. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
14 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
15 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
16 suffered and will continue to suffer an economic injury in amounts which are presently unknown
17 to them, and which will be ascertained according to proof at trial.

18 90. DEFENDANTS knew or should have known that PLAINTIFF and the other
19 members of the CALIFORNIA CLASS were under-compensated for their time worked.
20 DEFENDANTS 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 DEFENDANTS perpetrated this systematic scheme by refusing to pay
23 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
24 for their time worked.

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

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

5 92. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
6 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
7 assessment of any statutory penalties against DEFENDANTS, 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, DEFENDANTS' 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. DEFENDANTS' 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 93. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
21 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
22 Complaint.

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

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

3 96. 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 97. 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 98. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
11 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
12 they worked, including overtime work.

13 99. DEFENDANTS' 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.

20 100. In committing these violations of the California Labor Code, DEFENDANTS
21 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
22 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS 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.

26 101. As a direct result of DEFENDANTS' 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 DEFENDANTS.

1 102. 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 brings this Action on behalf of himself and the CALIFORNIA CLASS based on
7 DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
8 California.

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

12 104. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of
13 the 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 DEFENDANTS
17 failed to accurately record and pay as evidenced by DEFENDANTS' business records and
18 witnessed by employees.

19 105. By virtue of DEFENDANTS' 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.

24 106. DEFENDANTS knew or should have known that PLAINTIFF and the other
25 members of the CALIFORNIA CLASS were undercompensated for their time worked.
26 DEFENDANTS 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 DEFENDANTS perpetrated this systematic scheme by refusing to pay

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

3 107. 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, DEFENDANTS acted and continue 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.

11 108. 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 DEFENDANTS, 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, DEFENDANTS' 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. DEFENDANTS' 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)**

25 109. 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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1 110. During the CLASS PERIOD, DEFENDANTS 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 DEFENDANTS for their meal periods. Additionally, DEFENDANTS'
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 DEFENDANTS' business
10 records. Further, DEFENDANTS 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 DEFENDANTS' strict corporate policy and practice.

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

20 112. 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)**

5 113. 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.

8 114. 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 DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to
18 compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as
19 required by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to
20 provide PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid
21 rest periods is evidenced by DEFENDANTS' business records.

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

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

SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

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

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

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

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

119. When DEFENDANTS 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, DEFENDANTS violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide PLAINTIFFS 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.

120. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226(a)(1)-(9).

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

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code § 203)**

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

5 122. 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.

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

9 As used in this article:

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

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

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

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

29 126. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS
30 Members' employment contract.

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

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

37 ///

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

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

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees for Required Expenses

(Cal. Lab. Code §§ 2802)

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

130. 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.

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

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

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

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

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

13 **PRAYER FOR RELIEF**

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

16 1. On behalf of the CALIFORNIA CLASS:

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

27 2. On behalf of the CALIFORNIA CLASS:

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

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

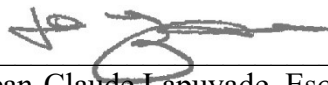
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant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

3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or § 1194.

DATED: June 28, 2024

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

DATED: June 28, 2024

JCL LAW FIRM, APC

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