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Attorneys for PLAINTIFF GUSTAVO ADAME

SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF ALAMEDA**

GUSTAVO ADAME, an individual, on behalf
 of himself and on behalf of all persons similarly
 situated,

Plaintiff,

v.

HUSTEAD'S COLLISION CENTER, INC., a
 California Corporation; and DOES 1-50,
 Inclusive,

Defendants.

Case No: 22CV018744

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1) RETALIATION IN VIOLATION OF CAL. LAB. CODE § 1102.5;
- 2) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
- 3) VIOLATION OF GOV'T CODE § 12940 – DISABILITY AND RACIAL DISCRIMINATION;
- 4) FAILURE TO PROVIDE REASONABLE ACCOMMODATION;
- 5) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 6) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 7) FAILURE TO PAY OVERTIME WAGES

05/20/2024

Chad Finke, Executive Officer / Clerk of the Court

By: D. Franklin Deputy

IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;

- 8) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 9) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 10) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 11) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.
- 12) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 13) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.]

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant HUSTEAD’S COLLISION CENTER, INC. (“DEFENDANT” and/or “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. DEFENDANT owns and operates automobile collision repair shops in the state of California, including in Alameda County, where PLAINTIFF worked.

3. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.

1 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
2 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter
3 collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one
4 or more of the events and happenings that proximately caused the injuries and damages
5 hereinafter alleged.

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

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

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

25 7. PLAINTIFF was employed by DEFENDANTS in California from 2014 to May of
26 2020 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
27 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
28 and overtime wages due for all time worked.

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

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

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

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

26
27 ///

28 **JURISDICTION AND VENUE**

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

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

THE CONDUCT

Plaintiff's Individual Claims

14. PLAINTIFF was employed by DEFENDANTS in California from 2014 to May 15, 2020. PLAINTIFF is Hispanic and deaf.

15. Throughout his employment with DEFENDANTS, PLAINTIFF was treated differently and unfairly by DEFENDANTS and its agents, all in retaliation against PLAINTIFF for various protected activities.

16. In or around 2016 through 2017, PLAINTIFF complained to DEFENDANTS' owner, Jonathan Yi, about the discriminatory and harassing treatment made to PLAINTIFF by PLAINTIFF's supervisor, Sean Schenck, regarding PLAINTIFF'S disability. The complaints were ignored, and the harassment continued until PLAINTIFF was terminated on May 15, 2020. PLAINTIFF reported the unlawful conduct to DEFENDANTS, but DEFENDANTS failed to address or remedy PLAINTIFF's reports.

17. Further, Plaintiff Adame is informed and believes, and upon such information and belief alleges, that, during Plaintiff Adame's employment with DEFENDANTS and at the time of his termination, Plaintiff Adame was treated differently and unfairly by DEFENDANTS and its agents, all in discrimination against Plaintiff Adame because of his race, disability and medical condition. Plaintiff Adame is Hispanic and deaf. Plaintiff Adame uses American Sign Language (ASL) and can read and write in English, but Plaintiff Adame cannot read lips. Therefore, at all

1 times during his employment with DEFENDANTS, Plaintiff Adame required an interpreter.
2 Plaintiff Adame never felt that he was accepted by DEFENDANTS because of his race, disability
3 and medical condition.

4 18. Plaintiff Adame is informed and believes, and upon such information and belief
5 alleges, that, during Plaintiff Adame's employment with DEFENDANTS and at the time of his
6 termination, DEFENDANT hired and treated its employees who were not Hispanic and who did
7 not have a disability and medical condition far better than DEFENDANT treated Plaintiff Adame,
8 and solely on the basis that PLAINTIFF is Hispanic and deaf.

9 19. Specifically, beginning in or around 2014, DEFENDANTS began to institute a
10 series of discriminatory acts against PLAINTIFF. For example, PLAINTIFF'S supervisor, Sean
11 Schenck, harassed PLAINTIFF about his disability and would become upset when PLAINTIFF
12 would request that his supervisor write to PLAINTIFF in order to communicate. Schenck, in
13 addition to other coworkers, excluded PLAINTIFF from conversations. PLAINTIFF requested an
14 accommodation for his disability, and specifically an interpreter, multiple times throughout his
15 employment, for meetings and company events. DEFENDANT refused to provide PLAINTIFF
16 an interpreter until around 2017. Even when DEFENDANT began providing PLAINTIFF with
17 an interpreter, PLAINTIFF is informed and believes that DEFENDANT only provided an
18 interpreter when it was convenient for DEFENDANT, and not at all times when PLAINTIFF
19 required one. PLAINTIFF is informed and believes, and upon such information and belief, alleges
20 that, DEFENDANTS' adverse employment actions against PLAINTIFF were made to
21 PLAINTIFF on the basis that PLAINTIFF is Hispanic and has a disability and medical condition.
22 Following the foregoing series of incidents, and following the reporting of DEFENDANT's
23 discriminatory and adverse employment actions, including DEFENDANTS' failure to
24 accommodate PLAINTIFF'S disability, the discriminatory employment actions against
25 PLAINTIFF continued until the end of his employment. On May 15, 2020, DEFENDANT
26 retaliated against and terminated PLAINTIFF'S employment.

27 20. PLAINTIFF is informed and believes, and upon such information and belief
28 alleges, that, DEFENDANT's conduct in terminating PLAINTIFF was part of a pattern of

1 behavior by DEFENDANT aimed at removing employees who are Hispanic and who have
2 disabilities and medical conditions like PLAINTIFF from DEFENDANT's workforce.

3 21. PLAINTIFF filed a complaint with the California Department of Fair Employment
4 and Housing and received a "right to sue" letter on September 29, 2022, thereby exhausting his
5 administrative remedies. (See Exhibit #1.)

6 **Wage and Hour Class Action Claims**

7 22. In violation of the applicable sections of the California Labor Code and the
8 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
9 matter of company policy, practice and procedure, intentionally, knowingly and systematically
10 failed to provide legally compliant meal and rest periods, failed to accurately compensate
11 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
12 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
13 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to compensate
14 PLAINTIFF and other members of the CALIFORNIA CLASS meal rest premiums at the regular
15 rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the
16 accurate and full payment for all time worked as required by California law which allows
17 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply
18 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
19 against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

20 **A. Meal Period Violations**

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

1 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work
2 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.
3 More specifically, from time to time, PLAINTIFF and other CALIFORNIA CLASS Members
4 were required by DEFENDANTS to work through their meal breaks in order to meet
5 DEFENDANTS' prescribed labor hours to perform all the tasks required of them by
6 DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS Members were required to
7 perform work-related tasks. As a result, the PLAINTIFF and other CALIFORNIA CLASS
8 Members forfeited minimum wage and overtime wages by regularly working without their time
9 being accurately recorded and without compensation at the applicable minimum wage and
10 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
11 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
12 records.

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

1 **B. Rest Period Violations**

2 25. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
3 CALIFORNIA CLASS members were also required from time to time to work in excess of four
4 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
5 requirements and DEFENDANTS' inadequate staffing. More specifically, from time to time,
6 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to
7 work through their rest breaks in order to meet DEFENDANTS' prescribed labor hours to perform
8 all the tasks required of them by DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS
9 Members were required to perform work-related tasks.

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

21 **C. Unreimbursed Business Expenses**

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

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

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

16 **D. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
17 **Sick Pay**

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

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

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

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

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

27 33. 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 and knowingly failed to
2 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
3 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
4 This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the
5 payment of the correct overtime and double time compensation, meal and rest period premiums,
6 and sick pay as required by California law which allowed DEFENDANTS to illegally profit and
7 gain an unfair advantage over competitors who complied with the law. To the extent equitable
8 tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANTS,
9 the CLASS PERIOD should be adjusted accordingly.

10 **E. Wage Statement Violations**

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

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

1 36. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
2 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
3 Cal. Lab. Code § 226.

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

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

9 38. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
10 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
11 meaning the time during which an employee is subject to the control of an employer, including all
12 the time the employee is suffered or permitted to work. From time to time, DEFENDANTS required
13 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
14 they were under DEFENDANTS' control. More specifically, from time to time, PLAINTIFF and
15 other CALIFORNIA CLASS Members were required by DEFENDANTS to perform work before
16 and after the beginning of their shifts in order to meet DEFENDANTS' prescribed labor hours to
17 perform all the tasks required of them by DEFENDANTS. Additionally, since DEFENDANTS
18 required PLAINTIFF and other CALIFORNIA CLASS Members to perform as much work as
19 possible and as quickly as possible in order to meet DEFENDANTS' strict performance and
20 production requirements, PLAINTIFF and other CALIFORNIA CLASS Members were, from time
21 to time, required to work off-the-clock before and after their shifts in order to meet DEFENDANTS'
22 strict requirements.

23 39. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
24 minimum wage and overtime compensation by regularly working without their time being
25 accurately recorded and without compensation at the applicable minimum wage and overtime rates.
26 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS
27 necessary wages for attending for performing work at DEFENDANTS' direction, request and
28 benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF

1 and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS'
2 business records.

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

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

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

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

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

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

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

27 **G. CLASS ACTION ALLEGATIONS**

28 47. PLAINTIFF brings the Fifth through Twelfth Causes of Action as a class action

1 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
2 previously were employed by DEFENDANTS in California and classified as non-exempt
3 employees (“CALIFORNIA CLASS”) during the period beginning four years prior to the filing
4 of the original Complaint and ending on a date determined by the Court (“CLASS PERIOD”).
5 The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is
6 under five million dollars (\$5,000,000.00).

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

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

15 50. Common questions of law and fact regarding DEFENDANTS’ conduct, including
16 but not limited to, the off-the-clock work, unpaid mean and rest period premiums, failing to
17 provide legally compliant meal and rest periods, and failure to ensure they are paid at least
18 minimum wage and overtime, exist as to all members of the class and predominate over any
19 questions affecting solely any individual members of the class. Among the questions of law and
20 fact common to the class are:

- 21 i. Whether DEFENDANTS maintained legally compliant meal period policies and
22 practices;
- 23 ii. Whether DEFENDANTS maintained legally compliant rest period policies and
24 practices;
- 25 iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
26 CLASS Members accurate premium payments for missed meal and rest periods;
- 27 iv. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
28 CLASS Members accurate overtime wages;

- 1 v. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
2 CLASS Members at least minimum wage for all hours worked;
- 3 vi. Whether DEFENDANTS committed an act of unfair competition by
4 systematically failing to record and pay PLAINTIFF and the other members of the
5 CALIFORNIA CLASS for all time worked;
- 6 vii. Whether DEFENDANTS committed an act of unfair competition by
7 systematically failing to record all meal and rest breaks missed by PLAINTIFF
8 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed
9 the benefit of this work, required employees to perform this work and permits or
10 suffers to permit this work;
- 11 viii. Whether DEFENDANTS committed an act of unfair competition in violation of
12 the UCL, by failing to provide the PLAINTIFF and the other members of the
13 CALIFORNIA CLASS with the legally required meal and rest periods.
- 14 51. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
15 a result of DEFENDANTS' conduct and actions alleged herein.
- 16 52. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
17 the same interests as the other members of the class.
- 18 53. PLAINTIFF will fairly and adequately represent and protect the interests of the
19 CALIFORNIA CLASS Members.
- 20 54. PLAINTIFF retained able class counsel with extensive experience in class action
21 litigation.
- 22 55. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
23 interests of the other CALIFORNIA CLASS Members.
- 24 56. There is a strong community of interest among PLAINTIFF and the members of
25 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
26 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
27 sustained.
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57. The questions of law and fact common to the CALIFORNIA CLASS Members predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

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

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

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

FIRST CAUSE OF ACTION

(Retaliation in Violation of Cal. Lab. Code §§1102.5 and 6310, and Government Code § 12900, *et seq.*)

(Alleged By PLAINTIFF and against all Defendants)

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

1 61. At all relevant times, Labor Code section 1102.5 was in effect and was binding on
2 DEFENDANTS. This statute prohibits DEFENDANTS from retaliating against any employee,
3 including PLAINTIFF, for raising complaints of illegality and/or belief that the employee may
4 disclose illegality.

5 62. At all relevant times, Government Code section 12900 was in effect and was
6 binding on DEFENDANTS. This statute prohibits DEFENDANTS from committing unlawful
7 employment practices, including retaliating against PLAINTIFF for seeking to exercise rights
8 guaranteed under FEHA, participating in protected activities, reporting violations of applicable
9 state and/or federal law, and/or opposing DEFENDANTS' failure to provide such rights.

10 63. PLAINTIFF raised complaints of illegality while he worked for DEFENDANTS,
11 and DEFENDANTS retaliated against him by taking adverse employment actions including
12 terminating PLAINTIFF'S employment with DEFENDANT.

13 64. As a proximate result of DEFENDANT's willful, knowing, and intentional
14 violation(s) of Labor Code section 1102.5 and Government Code section 12900, PLAINTIFF has
15 suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and
16 anguish, all to his damage in a sum according to proof.

17 65. As a result of DEFENDANT's adverse employment actions against PLAINTIFF,
18 PLAINTIFF has suffered general and special damages in sums according to proof.

19 66. DEFENDANT's misconduct was committed intentionally, in a malicious,
20 oppressive manner, and fraudulent manner, entitling PLAINTIFF to punitive damages against
21 DEFENDANT.

22 **SECOND CAUSE OF ACTION**

23 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

24 **(Alleged By PLAINTIFF and against all Defendants)**

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

1 68. PLAINTIFF's wrongful termination on or about May 15, 2020 was for a
2 pretextual reason(s) to disguise DEFENDANTS' unlawful employment practices directed at
3 PLAINTIFF.

4 69. Within the State of California there exists a substantial and fundamental public
5 policy, set forth in the California Government Code §12900 et seq., which forbids disability
6 harassment/discrimination, retaliation, and wrongful termination. Unlawful harassment includes
7 the right to be free from unwanted, offensive harassment, and the right to protest such conduct
8 without fear of retaliation or further harm. This public policy of the state is one that benefits the
9 public at large and guarantees the rights of an employee to perform their work free from racial
10 and disability harassment/discrimination/retaliation.

11 70. The motivating reason(s) for PLAINTIFF's termination was racial and disability
12 harassment/discrimination and PLAINTIFF's protests and/or resistance thereof. PLAINTIFF's
13 discharge from his position of employment was in violation of the public policies of the State of
14 California.

15 71. As a result of DEFENDANTS' actions, PLAINTIFF has suffered substantial
16 losses in earnings and employment benefits and emotional distress in an amount to be determined
17 according to proof at trial.

18 72. In doing the acts herein alleged, DEFENDANTS acted with malice and
19 oppression, and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is entitled
20 to exemplary and punitive damages from DEFENDANT in an amount to be determined to punish
21 DEFENDANT and to deter such wrongful conduct in the future.

22 73. PLAINTIFF was harmed by DEFENDANT'S wrongful and illegal termination of
23 his employment.

24 74. The wrongful termination of the employment of PLAINTIFF was and is a
25 substantial factor causing harm to PLAINTIFF.

26 75. On September 29, 2022, PLAINTIFF filed a complaint with the Department of
27 Fair Employment & Housing ("DFEH"), and received an immediate Right to Sue the same
28 day. (See Exhibit #1.)

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1 provided by law, plaintiff filed a complaint with the DFEH, in full compliance with administrative
2 requirements, and received a right-to-sue letter.

3 85. DEFENDANT wholly failed to attempt any reasonable accommodation of
4 PLAINTIFF's known disability. DEFENDANT used PLAINTIFF's disability and his need for
5 an accommodation as an excuse for terminating PLAINTIFF'S employment.

6 86. PLAINTIFF believes and on that basis, alleges that his disability and the need to
7 accommodate his disability were substantial motivating factors in DEFENDANT's termination
8 of his employment.

9 87. As a proximate result of DEFENDANT's willful, knowing, and intentional
10 misconduct, PLAINTIFF has sustained and continues to sustain substantial losses of earnings and
11 other employment benefits.

12 88. As a proximate result of DEFENDANT's willful, knowing, and intentional
13 misconduct, PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and
14 physical and mental pain and anguish, all to his damage in a sum according to proof.

15 89. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees.
16 Pursuant to Government Code section 12965(b), PLAINTIFF is entitled to recover reasonable
17 attorneys' fees and costs (including expert costs) in an amount according to proof.

18 90. DEFENDANT's misconduct was committed intentionally, in a malicious,
19 despicable, oppressive manner, and fraudulent manner entitling plaintiff to punitive damages
20 against defendants.

21 **FIFTH CAUSE OF ACTION**

22 **Unlawful Business Practices**

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

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

25 91. 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.

28 92. DEFENDANT is a "person" as that term is defined under Cal. Bus. And Prof.
Code § 17021.

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

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

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

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

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

1 97. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
2 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
3 other members of the CALIFORNIA CLASS to be underpaid during their employment with
4 DEFENDANT.

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

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

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

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

23 102. All the acts described herein as violations of, among other things, the Industrial
24 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
25 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
26 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
27 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*
28

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

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

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

17 **SIXTH CAUSE OF ACTION**

18 **Failure To Pay Minimum Wages**

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

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

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

24 107. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
25 for DEFENDANT’S willful and intentional violations of the California Labor Code and the
26 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate
27 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.
28

1 108. 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.

3 109. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
5 the minimum so fixed is unlawful.

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

8 111. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
9 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
10 worked. As set forth herein, DEFENDANT'S uniform policy and practice was to unlawfully and
11 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
12 CALIFORNIA CLASS.

13 112. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
15 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
16 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

17 113. In committing these violations of the California Labor Code, DEFENDANT
18 inaccurately calculated the amount of time worked and consequently underpaid the actual time
19 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
20 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
21 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
22 laws and regulations.

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

26 115. During the CLASS PERIOD, PLAINTIFF and the other members of the
27 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
28 failure to pay all earned wages.

1 116. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
2 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
3 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
4 suffered and will continue to suffer an economic injury in amounts which are presently unknown
5 to them, and which will be ascertained according to proof at trial.

6 117. DEFENDANT knew or should have known that PLAINTIFF and the other
7 members of the CALIFORNIA CLASS are under-compensated for their time worked.
8 DEFENDANT systematically elected, either through intentional malfeasance or gross
9 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice
10 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
11 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
12 for their time worked.

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

21 119. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
22 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
23 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
24 California Labor Code and/or other applicable statutes. To the extent minimum wage
25 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
26 terminated their employment, DEFENDANT’S conduct also violates Labor Code §§ 201 and/or
27 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
28 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS

Members. DEFENDANT’S conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

SEVENTH CAUSE OF ACTION

Failure To Pay Overtime Compensation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 135. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
27 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
28 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a

1 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
2 minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS
3 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
4 Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time
5 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
6 CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful,
7 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
8 Members are entitled to seek and recover statutory costs.

9 **EIGHTH CAUSE OF ACTION**

10 **Failure To Provide Required Meal Periods**

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

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

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

16 137. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
17 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
18 required by the applicable Wage Order and Labor Code. The nature of the work performed by
19 PLAINTIFF and CALIFORNIA CLASS MEMBERS did not prevent these employees from being
20 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
21 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
22 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
23 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
24 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
25 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
26 Members with a second off-duty meal period in some workdays in which these employees were
27 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
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1 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
2 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

11 **NINTH CAUSE OF ACTION**

12 **Failure To Provide Required Rest Periods**

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

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

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

18 141. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
19 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
20 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
21 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
22 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
23 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
24 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
25 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
26 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
27 DEFENDANT and DEFENDANT's managers. As a result, DEFENDANT's failure to provide
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1 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
2 periods is evidenced by DEFENDANT's business records.

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

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

11 **TENTH CAUSE OF ACTION**

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

13 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

23 147. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
24 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
25 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
26 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members
27 for expenses which included, but were not limited to, personal expenses incurred for the use of
28 their personal cell phones all on behalf of and for the benefit of DEFENDANT. Specifically,

1 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use
2 their own cell phones to execute their essential job duties on behalf of DEFENDANT.
3 DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and
4 the CALIFORNIA CLASS members for expenses resulting from the use of their personal cell
5 phones for DEFENDANT within the course and scope of their employment for DEFENDANT.
6 These expenses were necessary to complete their principal job duties. DEFENDANT is estopped
7 by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses
8 were necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,
9 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
10 members for these expenses as an employer is required to do under the laws and regulations of
11 California.

12 148. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
13 by her and the CALIFORNIA CLASS members in the discharge of their job duties for
14 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory
15 rate and costs under Cal. Lab. Code § 2802.

16 **ELEVENTH CAUSE OF ACTION**

17 **Failure To Pay Wages When Due**

18 **(Cal. Lab. Code §§ 203)**

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

20 149. 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.

23 150. Cal. Lab. Code § 200 provides that:

24 As used in this article:

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

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

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

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

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

154. Cal. Lab. Code § 203 provides:

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

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

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

TWELFTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

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

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

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

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

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

23 159. When DEFENDANT did not accurately record PLAINTIFF’S and other
24 CALIFORNIA CLASS Members’ missed meal and rest breaks, or were paid inaccurate missed
25 meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal.
26 Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA
27 CLASS Members with complete and accurate wage statements which failed to show, among other
28 things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked

1 and all applicable hourly rates in effect during the pay period and the corresponding amount of
2 time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal
3 and rest periods.

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

7 161. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
8 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
9 CLASS. These damages include, but are not limited to, costs expended calculating the correct
10 wages for all missed meal and rest breaks and the amount of employment taxes which were not
11 properly paid to state and federal tax authorities. These damages are difficult to estimate.
12 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
13 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
14 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
15 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
16 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
17 of the CALIFORNIA CLASS herein).

18 **THIRTEENTH CAUSE OF ACTION**

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

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

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

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

24 163. PAGA is a mechanism by which the State of California itself can enforce state
25 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
26 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
27 fundamentally a law enforcement action designed to protect the public and not to benefit private
28 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means

1 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
2 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
3 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
4 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

5 164. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, bring this Representative Action on behalf of the State of California with respect to himself
8 and all employees who worked for Defendant in California during the time period of September
9 29, 2021 until the present (the "AGGRIEVED EMPLOYEES").

10 165. On September 29, 2022, PLAINTIFF gave written notice by certified mail to the
11 Labor and Workforce Development Agency (the "Agency") and the employer of the specific
12 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
13 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
14 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
15 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
16 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
17 EMPLOYEES as herein defined.

18 166. The policies, acts and practices heretofore described were and are an unlawful
19 business act or practice because DEFENDANTS (a) failed to pay AGGRIEVED EMPLOYEES
20 minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally
21 required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct
22 regular rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, (e) failed
23 to reimburse business expenses, (f) failed to timely pay wages, and (g) failed to provide accurate
24 itemized wage statements, all in violation of the applicable Labor Code sections listed in Labor
25 Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,
26 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 558.1, 1174(d), 1174.5, 1194, 1197,
27 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, 2699.5, and the applicable Industrial Wage
28 Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF

1 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General
2 Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on
3 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFFS prays for a judgment against each Defendant, jointly and
6 severally, as follows:

7 1. On behalf of the CALIFORNIA CLASS:

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

18 2. On behalf of the CALIFORNIA CLASS:

- 19 a. That the Court certify the Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action
20 asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of
21 Civ. Proc. § 382;
22 b. Compensatory damages, according to proof at trial, including compensatory
23 damages for minimum wage and overtime compensation, due to PLAINTIFF and
24 the other members of the CALIFORNIA CLASS, during the applicable CLASS
25 PERIOD plus interest thereon at the statutory rate;
26 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
27 the applicable IWC Wage Order;
28 d. The wages of all terminated employees from the CALIFORNIA CLASS as a

penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On Plaintiff's First through Fourth Causes of Action:

- a. For all special damages which were sustained as a result of DEFENDANTS' conduct, including but not limited to, back pay, front pay, lost compensation and job benefits that PLAINTIFF would have received but for the practices of DEFENDANTS;
 - b. For all exemplary damages, according to proof, which were sustained as a result of DEFENDANTS' conduct;
 - c. An award of interest, including prejudgment interest at the legal rate;
 - d. Such other and further relief as the Court deems just and equitable; and
 - e. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
4. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004;
5. On all claims:
- a. An award of interest, including prejudgment interest at the legal rate;
 - b. Such other and further relief as the Court deems just and equitable; and
 - c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: May 15, 2024

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

DATED: May 15, 2024

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1



Client # 54501

September 29, 2022

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

HUSTEAD'S COLLISION CENTER, INC.

c/o Janice Lee
3613 Pontina Court
Pleasanton, CA 94566

Via Certified Mail and Return Receipt No. 7021 1970 0001 8870 1279

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, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and 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 GUSTAVO ADAME ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant HUSTEAD'S COLLISION CENTER, INC. ("Defendant"). Plaintiff was employed by Defendant in California from 2014 to May of 2020 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 and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all their time worked, and for all their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendant's conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5 *et seq.*

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 is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant, 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 Act 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,



Shani O. Zakay
Attorney for Plaintiff

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
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julieann@zakaylaw.com

Attorneys for Plaintiff GUSTAVO ADAME

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

GUSTAVO ADAME, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

HUSTEAD'S COLLISION CENTER, INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) RETALIATION IN VIOLATION OF CAL. LAB. CODE § 1102.5;
- 2) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
- 3) VIOLATION OF GOV'T CODE § 12940 – DISABILITY AND RACIAL DISCRIMINATION;
- 4) FAILURE TO PROVIDE REASONABLE ACCOMMODATION;
- 5) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 6) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 7) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§

510 *et seq*;

- 8) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 9) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 10) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 11) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.
- 12) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226.

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant HUSTEAD’S COLLISION CENTER, INC. (“DEFENDANT” and/or “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. DEFENDANT owns and operates automobile collision repair shops in the state of California, including in Alameda County, where PLAINTIFF worked.

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

collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

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

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

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

7. PLAINTIFF was employed by DEFENDANTS in California from 2014 to May of 2020 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

8. PLAINTIFF brings this Class Action on behalf of himself and a California class, 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”). The amount in controversy for the aggregate claim of the
4 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

19 11. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
20 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
21 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
22 injured by DEFENDANTS’ past and current unlawful conduct, and all other appropriate legal and
23 equitable relief.

24 **JURISDICTION AND VENUE**

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

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

THE CONDUCT

Plaintiff's Individual Claims

14. PLAINTIFF was employed by DEFENDANTS in California from 2014 to May 15, 2020. PLAINTIFF is Hispanic and deaf.

15. Throughout his employment with DEFENDANTS, PLAINTIFF was treated differently and unfairly by DEFENDANTS and its agents, all in retaliation against PLAINTIFF for various protected activities.

16. In or around 2016 through 2017, PLAINTIFF complained to DEFENDANTS' owner, Jonathan Yi, about the discriminatory and harassing treatment made to PLAINTIFF by PLAINTIFF's supervisor, Sean Schenck, regarding PLAINTIFF'S disability. The complaints were ignored, and the harassment continued until PLAINTIFF was terminated on May 15, 2020. PLAINTIFF reported the unlawful conduct to DEFENDANTS, but DEFENDANTS failed to address or remedy PLAINTIFF'S reports.

17. Further, PLAINTIFF is informed and believes, and upon such information and belief alleges, that, during PLAINTIFF's employment with DEFENDANTS and at the time of his termination, PLAINTIFF was treated differently and unfairly by DEFENDANTS and its agents, all in discrimination against PLAINTIFF because of his race, disability and medical condition. PLAINTIFF is Hispanic and deaf. PLAINTIFF uses American Sign Language (ASL) and can read and write in English, but PLAINTIFF cannot read lips. Therefore, at all times during his employment with DEFENDANTS, PLAINTIFF required an interpreter. PLAINTIFF never felt that he was accepted by DEFENDANTS because of his race, disability and medical condition.

18. PLAINTIFF is informed and believes, and upon such information and belief alleges, that, during PLAINTIFF'S employment with DEFENDANTS and at the time of his

1 termination, DEFENDANT hired and treated its employees who were not Hispanic and who did
2 not have a disability and medical condition far better than DEFENDANT treated PLAINTIFF,
3 and solely on the basis that PLAINTIFF is Hispanic and deaf.

4 19. Specifically, beginning in or around 2014, DEFENDANTS began to institute a
5 series of discriminatory acts against PLAINTIFF. For example, PLAINTIFF'S supervisor, Sean
6 Schenck, harassed PLAINTIFF about his disability and would become upset when PLAINTIFF
7 would request that his supervisor write to PLAINTIFF in order to communicate. Schenck, in
8 addition to other coworkers, excluded PLAINTIFF from conversations. PLAINTIFF requested an
9 accommodation for his disability, and specifically an interpreter, multiple times throughout his
10 employment, for meetings and company events. DEFENDANT refused to provide PLAINTIFF
11 an interpreter until around 2017. Even when DEFENDANT began providing PLAINTIFF with
12 an interpreter, PLAINTIFF is informed and believes that DEFENDANT only provided an
13 interpreter when it was convenient for DEFENDANT, and not at all times when PLAINTIFF
14 required one. PLAINTIFF is informed and believes, and upon such information and belief, alleges
15 that, DEFENDANTS' adverse employment actions against PLAINTIFF were made to
16 PLAINTIFF on the basis that PLAINTIFF is Hispanic and has a disability and medical condition.
17 Following the foregoing series of incidents, and following the reporting of DEFENDANT'S
18 discriminatory and adverse employment actions, including DEFENDANTS' failure to
19 accommodate PLAINTIFF'S disability, the discriminatory employment actions against
20 PLAINTIFF continued until the end of his employment. On May 15, 2020, DEFENDANT
21 retaliated against and terminated PLAINTIFF'S employment.

22 20. PLAINTIFF is informed and believes, and upon such information and belief
23 alleges, that, DEFENDANT'S conduct in terminating PLAINTIFF was part of a pattern of
24 behavior by DEFENDANT aimed at removing employees who are Hispanic and who have
25 disabilities and medical conditions like PLAINTIFF from DEFENDANT'S workforce.

26 21. PLAINTIFF filed a complaint with the California Department of Fair Employment
27 and Housing and received a "right to sue" letter on September 29, 2022, thereby exhausting his
28 administrative remedies. (See Exhibit #1.)

1 **Wage and Hour Class Action Claims**

2 22. In violation of the applicable sections of the California Labor Code and the
3 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
4 matter of company policy, practice and procedure, intentionally, knowingly and systematically
5 failed to provide legally compliant meal and rest periods, failed to accurately compensate
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
7 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
8 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to compensate
9 PLAINTIFF and other members of the CALIFORNIA CLASS meal rest premiums at the regular
10 rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the
11 accurate and full payment for all time worked as required by California law which allows
12 DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply
13 with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
14 against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

15 **A. Meal Period Violations**

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

1 DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS Members were required to
2 perform work-related tasks. As a result, the PLAINTIFF and other CALIFORNIA CLASS
3 Members forfeited minimum wage and overtime wages by regularly working without their time
4 being accurately recorded and without compensation at the applicable minimum wage and
5 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
6 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
7 records.

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

24 **B. Rest Period Violations**

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

1 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANTS to
2 work through their rest breaks in order to meet DEFENDANTS' prescribed labor hours to perform
3 all the tasks required of them by DEFENDANTS. PLAINTIFF and other CALIFORNIA CLASS
4 Members were required to perform work-related tasks.

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

16 **C. Unreimbursed Business Expenses**

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

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

12
13 **D. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
14 **Sick Pay**

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

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

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

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

25 33. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
27 matter of company policy, practice and procedure, intentionally and knowingly failed to
28 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate

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

8 **E. Wage Statement Violations**

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

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

26 36. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
27 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
28 Cal. Lab. Code § 226.

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

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

6 38. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
7 required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked,
8 meaning the time during which an employee is subject to the control of an employer, including all
9 the time the employee is suffered or permitted to work. From time to time, DEFENDANTS required
10 PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time
11 they were under DEFENDANTS' control. More specifically, from time to time, PLAINTIFF and
12 other CALIFORNIA CLASS Members were required by DEFENDANTS to perform work before
13 and after the beginning of their shifts in order to meet DEFENDANTS' prescribed labor hours to
14 perform all the tasks required of them by DEFENDANTS. Additionally, since DEFENDANTS
15 required PLAINTIFF and other CALIFORNIA CLASS Members to perform as much work as
16 possible and as quickly as possible in order to meet DEFENDANTS' strict performance and
17 production requirements, PLAINTIFF and other CALIFORNIA CLASS Members were, from time
18 to time, required to work off-the-clock before and after their shifts in order to meet DEFENDANTS'
19 strict requirements.

20 39. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
21 minimum wage and overtime compensation by regularly working without their time being
22 accurately recorded and without compensation at the applicable minimum wage and overtime rates.
23 DEFENDANTS failed to pay PLAINTIFF and other members of the CALIFORNIA CLASS
24 necessary wages for attending for performing work at DEFENDANTS' direction, request and
25 benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF
26 and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS'
27 business records.

1 40. DEFENDANTS directed and directly benefited from the uncompensated off-the-
2 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

3 41. DEFENDANTS controlled the work schedules, duties, protocols, applications,
4 assignments, and employment conditions of PLAINTIFF and the other members of the
5 CALIFORNIA CLASS.

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

11 43. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
12 exempt employees, subject to the requirements of the California Labor Code.

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

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

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

25 **G. CLASS ACTION ALLEGATIONS**

26 47. PLAINTIFF brings the Fifth through Twelfth Causes of Action as a class action
27 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
28 previously were employed by DEFENDANTS in California and classified as non-exempt

employees (“CALIFORNIA CLASS”) during the period beginning four years prior to the filing of the Complaint and ending on a date determined by the Court (“CLASS PERIOD”). The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

48. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, and illegal meal and rest period policies. Defendant further failed to compensate for off-the-clock work and failed to maintain required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

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

50. Common questions of law and fact regarding DEFENDANTS’ conduct, including but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failing to provide legally compliant meal and rest periods, and failure to ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

- i. Whether DEFENDANTS maintained legally compliant meal period policies and practices;
- ii. Whether DEFENDANTS maintained legally compliant rest period policies and practices;
- iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;
- iv. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- v. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;

1 vi. Whether DEFENDANTS committed an act of unfair competition by
2 systematically failing to record and pay PLAINTIFF and the other members of the
3 CALIFORNIA CLASS for all time worked;

4 vii. Whether DEFENDANTS committed an act of unfair competition by
5 systematically failing to record all meal and rest breaks missed by PLAINTIFF
6 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed
7 the benefit of this work, required employees to perform this work and permits or
8 suffers to permit this work;

9 viii. Whether DEFENDANTS committed an act of unfair competition in violation of
10 the UCL, by failing to provide the PLAINTIFF and the other members of the
11 CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

16 53. PLAINTIFF will fairly and adequately represent and protect the interests of the
17 CALIFORNIA CLASS Members.

18 54. PLAINTIFF retained able class counsel with extensive experience in class action
19 litigation.

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

22 56. There is a strong community of interest among PLAINTIFF and the members of
23 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
24 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
25 sustained.

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

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

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

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

FIRST CAUSE OF ACTION

(Retaliation in Violation of Cal. Lab. Code §§1102.5 and 6310, and Government Code § 12900, *et seq.*)

(Alleged By PLAINTIFF and against all Defendants)

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

61. At all relevant times, Labor Code section 1102.5 was in effect and was binding on DEFENDANTS. This statute prohibits DEFENDANTS from retaliating against any employee, including PLAINTIFF, for raising complaints of illegality and/or belief that the employee may disclose illegality.

1 62. At all relevant times, Government Code section 12900 was in effect and was
2 binding on DEFENDANTS. This statute prohibits DEFENDANTS from committing unlawful
3 employment practices, including retaliating against PLAINTIFF for seeking to exercise rights
4 guaranteed under FEHA, participating in protected activities, reporting violations of applicable
5 state and/or federal law, and/or opposing DEFENDANTS' failure to provide such rights.

6 63. PLAINTIFF raised complaints of illegality while he worked for DEFENDANTS,
7 and DEFENDANTS retaliated against him by taking adverse employment actions including
8 terminating PLAINTIFF'S employment with DEFENDANT.

9 64. As a proximate result of DEFENDANT's willful, knowing, and intentional
10 violation(s) of Labor Code section 1102.5 and Government Code section 12900, PLAINTIFF has
11 suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and
12 anguish, all to his damage in a sum according to proof.

13 65. As a result of DEFENDANT's adverse employment actions against PLAINTIFF,
14 PLAINTIFF has suffered general and special damages in sums according to proof.

15 66. DEFENDANT's misconduct was committed intentionally, in a malicious,
16 oppressive manner, and fraudulent manner, entitling PLAINTIFF to punitive damages against
17 DEFENDANT.

18 **SECOND CAUSE OF ACTION**

19 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

20 **(Alleged By PLAINTIFF and against all Defendants)**

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

23 68. PLAINTIFF's wrongful termination on or about May 15, 2020 was for a
24 pretextual reason(s) to disguise DEFENDANTS' unlawful employment practices directed at
25 PLAINTIFF.

26 69. Within the State of California there exists a substantial and fundamental public
27 policy, set forth in the California Government Code §12900 et seq., which forbids disability
28 harassment/discrimination, retaliation, and wrongful termination. Unlawful harassment includes

1 the right to be free from unwanted, offensive harassment, and the right to protest such conduct
2 without fear of retaliation or further harm. This public policy of the state is one that benefits the
3 public at large and guarantees the rights of an employee to perform their work free from racial
4 and disability harassment/discrimination/retaliation.

5 70. The motivating reason(s) for PLAINTIFF's termination was racial and disability
6 harassment/discrimination and PLAINTIFF's protests and/or resistance thereof. PLAINTIFF's
7 discharge from his position of employment was in violation of the public policies of the State of
8 California.

9 71. As a result of DEFENDANTS' actions, PLAINTIFF has suffered substantial
10 losses in earnings and employment benefits and emotional distress in an amount to be determined
11 according to proof at trial.

12 72. In doing the acts herein alleged, DEFENDANTS acted with malice and
13 oppression, and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is entitled
14 to exemplary and punitive damages from DEFENDANT in an amount to be determined to punish
15 DEFENDANT and to deter such wrongful conduct in the future.

16 73. PLAINTIFF was harmed by DEFENDANT'S wrongful and illegal termination of
17 his employment.

18 74. The wrongful termination of the employment of PLAINTIFF was and is a
19 substantial factor causing harm to PLAINTIFF.

20 75. On September 29, 2022, PLAINTIFF filed a complaint with the Department of
21 Fair Employment & Housing ("DFEH"), and received an immediate Right to Sue the same
22 day. (See Exhibit #1.)

23 **THIRD CAUSE OF ACTION**

24 **VIOLATION OF GOVERNMENT CODE §12940 et seq. – RACIAL AND DISABILITY**
25 **DISCRIMINATION**

26 **(Alleged By PLAINTIFF and against all Defendants)**

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

1 77. PLAINTIFF was employed by DEFENDANT.
2 78. DEFENDANT is employer covered by Government Code §12940 et seq.
3 79. PLAINTIFF was terminated from his employment and/or suffered other adverse
4 employment actions.
5 80. PLAINTIFF'S race and disability were a substantial motivating reason(s) for his
6 termination and other adverse employment actions.
7 81. As a result of DEFENDANT's conduct, PLAINTIFF has suffered substantial
8 losses in earnings and employment benefits and emotional distress in an amount to be determined
9 according to proof at trial.
10 82. In doing the acts herein alleged, DEFENDANT acted with malice and oppression,
11 and with a conscious disregard of PLAINTIFF'S rights, and PLAINTIFF is entitled to exemplary
12 and punitive damages from DEFENDANT in an amount to be punish DEFENDANTS and to
13 deter such wrongful conduct in the future.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE REASONABLE ACCOMMODATION**

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

17 83. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
18 herein, the prior paragraphs of this Complaint.
19 84. At all times herein mentioned, FEHA, Government Code section 12940(a), (i),
20 (m), and (n), was in full force and effect and was binding on defendants. This statute requires
21 defendants to provide reasonable accommodations to known disabled employees. Within the time
22 provided by law, plaintiff filed a complaint with the DFEH, in full compliance with administrative
23 requirements, and received a right-to-sue letter.
24 85. DEFENDANT wholly failed to attempt any reasonable accommodation of
25 PLAINTIFF's known disability. DEFENDANT used PLAINTIFF's disability and his need for
26 an accommodation as an excuse for terminating PLAINTIFF'S employment.
27 86. PLAINTIFF believes and on that basis, alleges that his disability and the need to
28 accommodate his disability were substantial motivating factors in DEFENDANT's termination
of his employment.

87. As a proximate result of DEFENDANT's willful, knowing, and intentional misconduct, PLAINTIFF has sustained and continues to sustain substantial losses of earnings and other employment benefits.

88. As a proximate result of DEFENDANT's willful, knowing, and intentional misconduct, PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and physical and mental pain and anguish, all to his damage in a sum according to proof.

89. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees. Pursuant to Government Code section 12965(b), PLAINTIFF is entitled to recover reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

90. DEFENDANT's misconduct was committed intentionally, in a malicious, despicable, oppressive manner, and fraudulent manner entitling plaintiff to punitive damages against defendants.

FIFTH CAUSE OF ACTION

Unlawful Business Practices

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

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

91. 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.

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

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

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any

1 money or property, real or personal, which may have been acquired by means of such
2 unfair competition. (Cal. Bus. & Prof. Code § 17203).

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

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

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

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

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

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

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

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

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

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

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

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

8 **SIXTH CAUSE OF ACTION**

9 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

26 111. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
27 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
28 worked. As set forth herein, DEFENDANT'S uniform policy and practice was to unlawfully and

1 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS.

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

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

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

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

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

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

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

3 118. In performing the acts and practices herein alleged in violation of California labor
4 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
5 and provide them with the requisite compensation, DEFENDANT acted and continues to act
6 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
7 CALIFORNIA CLASS with a conscious 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.

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

22 **SEVENTH CAUSE OF ACTION**

23 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

16 125. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
17 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
18 they worked, including overtime work.

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

26 127. In committing these violations of the California Labor Code, DEFENDANT
27 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
28 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal

1 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
2 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
3 regulations.

4 128. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
5 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
6 compensation for overtime worked.

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

15 130. During the CLASS PERIOD, PLAINTIFF and the other members of the
16 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
17 constituting a failure to pay all earned wages.

18 131. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
19 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
20 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
21 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
22 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as
23 evidenced by DEFENDANT's business records and witnessed by employees.

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

1 133. DEFENDANTS knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
3 DEFENDANT systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
5 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

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

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EIGHTH CAUSE OF ACTION

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

136. 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.

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

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

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

4 **NINTH CAUSE OF ACTION**

5 **Failure To Provide Required Rest Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

23 142. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
24 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
25 who were not provided a rest period, in accordance with the applicable Wage Order, one
26 additional hour of compensation at each employee's regular rate of pay for each workday that rest
27 period was not provided.
28

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

4 **TENTH CAUSE OF ACTION**

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

6 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

16 147. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
17 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
18 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
19 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members
20 for expenses which included, but were not limited to, personal expenses incurred for the use of
21 their personal cell phones all on behalf of and for the benefit of DEFENDANT. Specifically,
22 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use
23 their own cell phones to execute their essential job duties on behalf of DEFENDANT.
24 DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and
25 the CALIFORNIA CLASS members for expenses resulting from the use of their personal cell
26 phones for DEFENDANT within the course and scope of their employment for DEFENDANT.
27 These expenses were necessary to complete their principal job duties. DEFENDANT is estopped
28 by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses

1 were necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,
2 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
3 members for these expenses as an employer is required to do under the laws and regulations of
4 California.

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

9 **ELEVENTH CAUSE OF ACTION**

10 **Failure To Pay Wages When Due**

11 **(Cal. Lab. Code §§ 203)**

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

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

16 150. Cal. Lab. Code § 200 provides that:

17 As used in this article:

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

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

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

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

mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

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

154. Cal. Lab. Code § 203 provides:

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

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

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

TWELFTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

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

157. 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.

158. 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.

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

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

1 161. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
2 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
3 CLASS. These damages include, but are not limited to, costs expended calculating the correct
4 wages for all missed meal and rest breaks and the amount of employment taxes which were not
5 properly paid to state and federal tax authorities. These damages are difficult to estimate.
6 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
7 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
8 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
9 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
10 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
11 of the CALIFORNIA CLASS herein).

12 **PRAYER FOR RELIEF**

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

15 1. On behalf of the CALIFORNIA CLASS:

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

26 2. On behalf of the CALIFORNIA CLASS:

- 27 a. That the Court certify the Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action
28 asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of

1 Civ. Proc. § 382;

- 2 b. Compensatory damages, according to proof at trial, including compensatory
3 damages for minimum wage and overtime compensation, due to PLAINTIFF and
4 the other members of the CALIFORNIA CLASS, during the applicable CLASS
5 PERIOD plus interest thereon at the statutory rate;
- 6 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
7 the applicable IWC Wage Order;
- 8 d. The wages of all terminated employees from the CALIFORNIA CLASS as a
9 penalty from the due date thereof at the same rate until paid or until an action
10 therefore is commenced, in accordance with Cal. Lab. Code § 203.

11 3. On Plaintiff's First through Fourth Causes of Action:

- 12 a. For all special damages which were sustained as a result of DEFENDANTS'
13 conduct, including but not limited to, back pay, front pay, lost compensation and
14 job benefits that PLAINTIFF would have received but for the practices of
15 DEFENDANTS;
- 16 b. For all exemplary damages, according to proof, which were sustained as a result of
17 DEFENDANTS' conduct;
- 18 c. An award of interest, including prejudgment interest at the legal rate;
- 19 d. Such other and further relief as the Court deems just and equitable; and
- 20 e. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

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1 4. On all claims:

- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and
- 4 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
- 5

6 DATED: September 29, 2022

7 **ZAKAY LAW GROUP, APLC**

8 By: 
9 Shani O. Zakay
10 Attorney for PLAINTIFF

11 **DEMAND FOR A JURY TRIAL**

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

13 DATED: September 29, 2022

14 **ZAKAY LAW GROUP, APLC**

15 By: 
16 Shani O. Zakay
17 Attorney for PLAINTIFF

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EXHIBIT 1

EXHIBIT 1



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

September 29, 2022

Jackland Hom
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202209-18386529
Right to Sue: Adame / HUSTEAD'S COLLISION CENTER, INC.

Dear Jackland Hom:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

September 29, 2022

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202209-18386529
Right to Sue: Adame / HUSTEAD'S COLLISION CENTER, INC.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfef.ca.gov

Department of Fair Employment and Housing

EXHIBIT 1



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

September 29, 2022

Gustavo Adame

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202209-18386529
Right to Sue: Adame / HUSTEAD'S COLLISION CENTER, INC.

Dear Gustavo Adame:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective September 29, 2022 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

EXHIBIT 1

COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)

In the Matter of the Complaint of

Gustavo Adame

DFEH No. 202209-18386529

Complainant,

vs.

HUSTEAD'S COLLISION CENTER, INC.
2037 DURANT AVENUE
BERKELEY, CA 94704

Respondents

1. Respondent **HUSTEAD'S COLLISION CENTER, INC.** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant **Gustavo Adame**, resides in the City of , State of .

3. Complainant alleges that on or about **May 15, 2020**, respondent took the following adverse actions:

Complainant was harassed because of complainant's race, color, disability (physical or mental).

Complainant was discriminated against because of complainant's race, color, disability (physical or mental) and as a result of the discrimination was terminated, denied reasonable accommodation for a disability, denied work opportunities or assignments.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment, requested or used a disability-related accommodation and as a result was terminated, denied reasonable accommodation for a disability, denied work opportunities or assignments.

Additional Complaint Details: PLAINTIFF was employed by DEFENDANTS in California from 2014 to May 15, 2020. PLAINTIFF is Hispanic and deaf.

Throughout his employment with DEFENDANTS, PLAINTIFF was treated differently and unfairly by DEFENDANTS and its agents, all in retaliation against PLAINTIFF for various protected activities.

In or around 2016 through 2017, PLAINTIFF complained to DEFENDANTS' owner, Jonathan Yi, about the discriminatory and harassing treatment made to PLAINTIFF by PLAINTIFF's supervisor, Sean Schenck, regarding PLAINTIFF'S disability. The complaints were ignored, and the harassment continued until PLAINTIFF was terminated on May 15, 2020. PLAINTIFF reported the unlawful conduct to DEFENDANTS, but DEFENDANTS failed to address or remedy PLAINTIFF'S reports.

Further, PLAINTIFF is informed and believes, and upon such information and belief alleges, that, during PLAINTIFF's employment with DEFENDANTS and at the time of his termination, PLAINTIFF was treated differently and unfairly by DEFENDANTS and its agents, all in discrimination against PLAINTIFF because of his race, disability and medical condition. PLAINTIFF is Hispanic and deaf. PLAINTIFF uses American Sign Language (ASL) and can read and write in English, but PLAINTIFF cannot read lips. Therefore, at all times during his employment with DEFENDANTS, PLAINTIFF required an interpreter. PLAINTIFF never felt that he was accepted by DEFENDANTS because of his race, disability and medical condition.

PLAINTIFF is informed and believes, and upon such information and belief alleges, that, during PLAINTIFF'S employment with DEFENDANTS and at the time of his termination, DEFENDANT hired and treated its employees who were not Hispanic and who did not have a disability and medical condition far better than DEFENDANT treated PLAINTIFF, and solely on the basis that PLAINTIFF is Hispanic and deaf.

Specifically, beginning in or around 2014, DEFENDANTS began to institute a series of discriminatory acts against PLAINTIFF. For example, PLAINTIFF'S supervisor, Sean Schenck, harassed PLAINTIFF about his disability and would become upset when PLAINTIFF would request that his supervisor write to PLAINTIFF in order to communicate. Schenck, in addition to other coworkers, excluded PLAINTIFF from conversations. PLAINTIFF requested an accommodation for his disability, and specifically an interpreter, multiple times throughout his employment, for meetings and company events. DEFENDANT refused to provide PLAINTIFF an interpreter until around 2017. Even when DEFENDANT began providing PLAINTIFF with an interpreter, PLAINTIFF is informed and believes that DEFENDANT only provided an interpreter when it was convenient for DEFENDANT, and not at all times when PLAINTIFF required one. PLAINTIFF is informed and believes, and upon such information and belief, alleges that, DEFENDANTS' adverse employment actions against PLAINTIFF were made to PLAINTIFF on the basis that PLAINTIFF is Hispanic and has a disability and medical condition. Following the foregoing series of incidents, and following the reporting of DEFENDANT's discriminatory and adverse employment actions, including DEFENDANTS' failure to accommodate PLAINTIFF'S

1 disability, the discriminatory employment actions against PLAINTIFF continued until the end
2 of his employment. On May 15, 2020, DEFENDANT retaliated against and terminated
3 PLAINTIFF'S employment.

4 PLAINTIFF is informed and believes, and upon such information and belief alleges, that,
5 DEFENDANT's conduct in terminating PLAINTIFF was part of a pattern of behavior by
6 DEFENDANT aimed at removing employees who are Hispanic and who have disabilities
7 and medical conditions like PLAINTIFF from DEFENDANT's workforce.
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EXHIBIT 1

1 VERIFICATION

2 I, **Jackland K. Hom**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On September 29, 2022, I declare under penalty of perjury under the laws of the State
6 of California that the foregoing is true and correct.

7 **San Diego, CA**

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EXHIBIT 1

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See Reverse for Instructions

EXHIBIT 1