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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

FREDERICK LINDSAY, an individual, in his
representative capacity on behalf of the State of
California and fellow Aggrieved Employees,

Plaintiffs,

vs.

STAFFMARK INVESTMENT LLC, a
Delaware limited liability company, DENSO
INTERNATIONAL AMERICA, INC., a
Delaware corporation; DENSO PRODUCTS
AND SERVICES AMERICAS, INC., a
California corporation; and DOES 1 through 50,
Inclusive;

Defendants.

Case No. CVRI2203360

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL

1 Plaintiff FREDERICK LINDSAY (“PLAINTIFF”) an individual, in his representative
2 capacity on behalf of himself, the State of California, and fellow current and former AGGRIEVED
3 EMPLOYEES, defined *supra*, against STAFFMARK INVESTMENT LLC, DENSO
4 INTERNATIONAL AMERICA, INC., and DENSO PRODUCTS AND SERVICES AMERICAS,
5 INC. (hereinafter collectively referred to as “DEFENDANT” and/or “DEFENDANTS”), alleges on
6 information and belief, except for his own acts and knowledge which are based on personal
7 knowledge, the following:

8 **INTRODUCTION**

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

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

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

- 17 a. Failure to provide compliant meal and rest periods;
- 18 b. Failure to allow employees to take duty-free, off-the-premises rest periods;
- 19 c. Failure to pay all minimum, regular and overtime wages;
- 20 d. Failure to maintain true and accurate records;
- 21 e. Failure to provide accurate itemized wage statements; and
- 22 f. Failure to timely pay wages due during, and upon termination of employment.

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

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

THE PARTIES

6. Defendant STAFFMARK INVESTMENT LLC (“Defendant Staffmark”) is a Delaware limited liability company and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

7. Defendant DENSO INTERNATIONAL AMERICA, INC. (“Defendant Denso International”) is a Delaware corporation and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

8. Defendant DENSO PRODUCTS AND SERVICES AMERICAS, INC. (“Defendant Denso Products”) is a California corporation and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

9. Defendant Staffmark, Denso International, and Denso Products were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company PLAINTIFF worked for respectively and are therefore jointly responsible as employers for the conduct alleged herein a “DEFENDANTS” and/or “DEFENDANT.”

10. Defendant Staffmark owns and operates staffing agencies throughout the United States and staffs many companies in California, including at Defendant Denso International and Defendant Denso Products.

11. PLAINTIFF was employed by DEFENDANT in California as a non-exempt employee entitled to minimum wages, overtime pay and meal and rest periods from March of 2022 to April of 2022. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANTS as a non-exempt employee paid on an hourly basis, entitled to minimum wage and overtime pay and to compliant meal and rest breaks.

12. PLAINTIFF brings this action in his representative capacity on behalf of the State of California and on behalf of all persons who are or previously were employed by Defendant Staffmark and/or Defendant Denso International and/or Defendant Denso Products in California who performed work for Defendant Denso International and/or Defendant Denso Products in California and classified

as non-exempt employees (hereinafter “AGGRIEVED EMPLOYEES”) between June 3, 2021 and the present (“PAGA PERIOD”).

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

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

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

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

17. DEFENDANT was PLAINTIFF’s employer 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.

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1 **JOINT EMPLOYER**

2 18. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce
3 any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

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

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

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

18 22. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT, and each
19 of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees
20 the appropriate wages as complained of herein and proximately caused the complaints, injuries, and
21 damages alleged herein.

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

26 24. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF’s
27 wages, working hours, and/or working conditions.

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

4 **JURISDICTION AND VENUE**

5 26. This Court has jurisdiction over this Action pursuant to California Code of Civil
6 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Court
7 has jurisdiction over PLAINTIFF's claims for civil penalties under the Private Attorney General
8 Act of 2004, California Labor Code §2698, *et seq.*

9 27. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
10 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides in this County,
11 and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in
12 this County and/or conducts substantial business in this County, and (ii) committed the wrongful
13 conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED EMPLOYEES.

14 **THE CONDUCT**

15 28. In violation of the applicable sections of the California Labor Code and the requirements
16 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company
17 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
18 compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other
19 AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the
20 other AGGRIEVED EMPLOYEES for all time worked, failed compensate PLAINTIFF for off-the-
21 clock work, failed to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES overtime at the
22 correct regular rate of pay, failed to compensate PLAINTIFF and other AGGRIEVED EMPLOYEES
23 meal rest premiums at the regular rate, and failed to issue to PLAINTIFF and the AGGRIEVED
24 EMPLOYEES with accurate itemized wage statements showing, among other things, all applicable
25 hourly rates in effect during the pay periods and the corresponding amount of time worked at each
26 hourly rate. DEFENDANT's uniform policies and practices are intended to purposefully avoid the
27 accurate and full payment for all time worked as required by California law which allows
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1 DEFENDANT to illegally profit and gain an unfair advantage over competitors who comply with the
2 law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
3 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

4 **A. Meal Period Violations**

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

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

6 **B. Rest Period Violations**

7 31. From time-to-time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
8 EMPLOYEES were also required from time to time to work in excess of four (4) hours without being
9 provided ten (10) minute rest periods as a result of their rigorous work requirements and
10 DEFENDANT’s inadequate staffing. Further, for the same reasons these employees were denied their
11 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
12 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
13 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at
14 least 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 AGGRIEVED EMPLOYEES were, from time
16 to time, required to remain on duty and/or on call. PLAINTIFF and other AGGRIEVED
17 EMPLOYEES were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous
18 work schedules and DEFENDANT’s inadequate staffing, PLAINTIFF and other AGGRIEVED
19 EMPLOYEES were from time to time denied their proper rest periods by DEFENDANT and
20 DEFENDANT’s managers.

21 **C. Wage Statement Violations**

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

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

10 34. In addition, DEFENDANT, from time to time, failed to provide PLAINTIFF and the
11 AGGRIEVED EMPLOYEES with wage statements that comply with Cal. Lab. Code § 226.

12 35. As a result, DEFENDANT issued PLAINTIFF and the other AGGRIEVED
13 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's
14 violations are knowing and intentional, were not isolated or due to an unintentional payroll error due
15 to clerical or inadvertent mistake.

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

17 36. During the PAGA PERIOD, from time-to-time DEFENDANT failed and continue to fail
18 to accurately pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all hours worked.

19 37. During the PAGA PERIOD, from time-to-time DEFENDANT required PLAINTIFF and
20 other AGGRIEVED EMPLOYEES to perform pre-shift and post-shift work all while off-the-clock.
21 This resulted in PLAINTIFF and other AGGRIEVED EMPLOYEES to have to work while off-the-
22 clock.

23 38. DEFENDANT directed and directly benefited from the uncompensated off-the-clock
24 work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

25 39. DEFENDANT controlled the work schedules, duties, protocols, applications,
26 assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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

5 41. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt employees,
6 subject to the requirements of the California Labor Code.

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

12 43. DEFENDANT knew or should have known that PLAINTIFF and the other
13 AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.

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

19 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
20 **Sick Pay**

21 45. From time-to-time during the PAGA PERIOD, DEFENDANT failed and continue to fail
22 to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
23 overtime and double time hours worked, meal and rest period premiums, and sick pay. As a result,
24 PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for working
25 overtime without compensation at the correct overtime and double time rates, meal and rest period
26 premiums, and sick pay rates. DEFENDANT's uniform policy and practice to not pay the
27 AGGRIEVED EMPLOYEES the correct rate for all overtime and double time worked, meal and rest
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1 period premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANT's
2 business records.

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

6 47. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
7 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and
8 other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS.
9 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus
10 compensation when the employees met the various performance goals set by DEFENDANTS.

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

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

13 **F. Violations for Untimely Payment of Wages**

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

19 **G. Unlawful Rounding Violations**

20 51. During the PAGA PERIOD, DEFENDANT did not have in place an immutable
21 timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED EMPLOYEES
22 for the actual time these employees worked each day, including overtime hours. Specifically,
23 DEFENDANT had in place an unlawful rounding policy and practice that resulted in PLAINTIFF and
24 AGGRIEVED EMPLOYEES being undercompensated for all of their time worked. As a result,
25 DEFENDANT was able to and did in fact unlawfully, and unilaterally round the time recorded in
26 DEFENDANT'S timekeeping system for PLAINTIFF and the AGGRIEVED EMPLOYEES in order
27 to avoid paying these employees for all their time worked, including the applicable overtime
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1 compensation for overtime worked. As a result, PLAINTIFF, and other AGGRIEVED EMPLOYEES,
2 from time to time, forfeited compensation for their time worked by working without their time being
3 accurately recorded and without compensation at the applicable overtime rates.

4 52. Further, the mutability of DEFENDANT'S timekeeping system and unlawful rounding
5 policy and practice resulted in PLAINTIFF and AGGRIEVED EMPLOYEES' time being inaccurately
6 recorded. As a result, from time to time, DEFENDANT'S unlawful rounding policy and practice
7 caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as ordered by DEFENDANT
8 for more than five (5) hours during a shift without receiving an off-duty meal break. Additionally,
9 DEFENDANT'S unlawful rounding policy and practice caused PLAINTIFF and AGGRIEVED
10 EMPLOYEES to perform work as ordered by DEFENDANT for more than ten (10) hours during a
11 shift without receiving a second off-duty meal break.

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

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1 **FIRST CAUSE OF ACTION**

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

3 **[Cal. Lab. Code §§ 2698, et seq.]**

4 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

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

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

16 56. PLAINTIFF brings this Representative Action on behalf of the State of California with
17 respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by
18 DEFENDANT during the PAGA PERIOD.

19 57. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the
20 AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANT within the meaning of
21 Labor Code Section 2699(c).

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

25 59. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
26 Section 2699.3. By certified letter, return receipt requested, dated June 3, 2022, PLAINTIFF gave
27 written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANT of
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1 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories
2 to support the alleged violations. (See Exhibit #1.)

3 60. As of the date of this complaint, more than sixty-five (65) days after serving the LWDA
4 with notice of DEFENDANT'S violations, the LWDA has not provided any notice by certified mail of
5 its intent to investigate the DEFENDANT'S alleged violations as mandated by Labor Code Section
6 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may
7 commence and is authorized to pursue this cause of action.

8 61. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
9 EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201,
10 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d),
11 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802 ad 2804 in the following amounts:

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

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

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

26 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil
27 penalty in the amount of fifty dollars (\$50) for each underpaid
28

1 AGGRIEVED EMPLOYEE for the initial violation and hundred dollars
2 (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent
3 violation [penalty per Labor Code Section 558];

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

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

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

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

23 63. To the extent that any of the conduct and violations alleged herein did not affect
24 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected
25 other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519;
26 See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 ["PAGA allows
27 an "aggrieved employee"—a person affected by at least one Labor Code violation committed by an
28

1 employer—to pursue penalties for all the Labor Code violations committed by that employer.”],
2 Emphasis added, reh'g denied (June 13, 2018).)

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

6 (a) For reasonable attorney’s fees and costs of suit to the extent permitted by law, including
7 pursuant to Labor Code § 2699, *et seq.*;

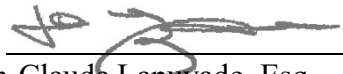
8 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the
9 Private Attorneys General Act; and

10 (c) For such other relief as the Court deems just and proper.
11

12 Dated: November 15, 2022

Respectfully Submitted,

13
14 JCL LAW FIRM, APC

15 By: 
16 Jean-Claude Lapuyade, Esq.
17 Attorneys for PLAINTIFF

18
19 **DEMAND FOR JURY TRIAL**

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

21 Dated: November 15, 2022

Respectfully Submitted,

22
23 JCL LAW FIRM, APC

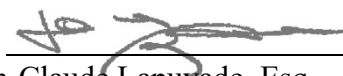
24 By: 
25 Jean-Claude Lapuyade, Esq.
26 Attorneys for PLAINTIFF
27
28

EXHIBIT 1



ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

Client #50201

June 3, 2022

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

STAFFMARK INVESTMENT LLC

c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Dr. STE 150N
Sacramento, CA 95833

Sent via Certified Mail and Return Receipt No. 7021 2720 0000 9972 7331

DENSO INTERNATIONAL AMERICA, INC.

DENSO PRODUCTS AND SERVICES AMERICAS, INC.

c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Dr. STE 150N
Sacramento, CA 95833

Sent via Certified Mail and Return Receipt No. 7021 2720 0000 9972 7355

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, 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 FREDERICK LINDSAY (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendants STAFFMARK INVESTMENT LLC (“Defendant Staffmark”), DENSO INTERNATIONAL AMERICA, INC. (“Defendant Denso International”) and DENSO PRODUCTS AND SERVICE AMERICAS, INC. (“Defendant Denso Products”) (collectively “Defendants”). Plaintiff was employed by Defendants in California from March of 2022 to April of 2022 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. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence, Plaintiff contend that Defendants 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 Defendants’ 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, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant Staffmark and/or Defendant Denso International and/or Defendant Denso Products who performed work for Defendant Denso International and/or Defendant Denso Products 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 Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

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

ZAKAY LAW GROUP, APLC

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Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
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Eduardo Garcia (State Bar #290572)
Sydney Castillo-Johnson (State Bar #343881)
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egarcia@jcl-lawfirm.com
scastillo@jcl-lawfirm.com

Attorneys for Plaintiff FREDERICK LINDSAY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

FREDERICK LINDSAY, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

STAFFMARK INVESTMENT LLC, a
Delaware limited liability company, DENSO
INTERNATIONAL AMERICA, INC., a
Delaware corporation; DENSO PRODUCTS
AND SERVICES AMERICAS, INC., a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE § 226;
7) FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203;
8) RETALIATION IN VIOLATION OF CAL.
LAB. CODE § 1102.5;
9) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;
10) VIOLATION OF CAL. GOV. CODE §
12940 – SEXUAL HARASSMENT AND
RACIAL DISCRIMINATION.

DEMAND FOR A JURY TRIAL

Plaintiff FREDERICK LINDSAY (“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 STAFFMARK INVESTMENT LLC. (“Defendant Staffmark”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant DENSO INTERNATIONAL AMERICA, INC. (“Defendant Denso International”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant DENSO PRODUCTS AND SERVICE AMERICAS, INC. (“Defendant Denso Products”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

4. Defendant Staffmark, Denso International, and Denso Products were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

5. Defendant Staffmark owns and operates staffing agencies throughout the United States and staffs many companies in California, including at Defendant Denso International and Defendant Denso Products.

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

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

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

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

1 10. PLAINTIFF was employed by DEFENDANT in California from March of 2022
2 to April of 2022 and at all times was classified by DEFENDANT as a non-exempt employee, paid
3 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
4 minimum and overtime wages due for all time worked.

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

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

24 13. DEFENDANT's uniform policies and practices alleged herein were unlawful,
25 unfair, and deceptive business practices whereby DEFENDANT retained and continues to retain
26 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

27 14. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
28 injunction enjoining such conduct by DEFENDANT in the future, relief for the named
PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically

1 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
2 equitable relief.

3 **JURISDICTION AND VENUE**

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

8 16. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
10 the CALIFORNIA CLASS across California, including in this County, and committed the
11 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

12 **THE CONDUCT**

13 17. In violation of the applicable sections of the California Labor Code and the
14 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
15 matter of company policy, practice and procedure, intentionally, knowingly and systematically
16 failed to provide legally compliant meal and rest periods, failed to accurately compensate
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
18 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
19 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
20 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
21 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
22 premiums at the regular rate, and failed to issue to PLAINTIFF and the members of the
23 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all
24 applicable hourly rates in effect during the pay periods and the corresponding amount of time
25 worked at each hourly rate. DEFENDANT's uniform policies and practices are intended to
26 purposefully avoid the accurate and full payment for all time worked as required by California
27 law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors
28 who comply with the law. To the extent equitable tolling operates to toll claims by the

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

A. Meal Period Violations

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

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

1 provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from
2 time to time, required to remain on duty and on call. PLAINTIFF and other CALIFORNIA
3 CLASS Members therefore forfeited meal breaks without additional compensation and in
4 accordance with DEFENDANT's strict corporate policy and practice.

5 **B. Rest Period Violations**

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

20 **C. Wage Statement Violations**

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

22. From time to time during the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, 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, correct rates of pay for penalty payments or missed meal and rest periods.

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

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

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

25. During the CLASS PERIOD, from time-to-time DEFENDANT failed and continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all hours worked.

26. During the CLASS PERIOD, from time-to-time DEFENDANT required PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift and post-shift work all while off-the-clock. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

27. DEFENDANT directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

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

5 30. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
6 exempt employees, subject to the requirements of the California Labor Code.

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

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

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

19 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
20 **Sick Pay**

21 34. From time-to-time during the CLASS PERIOD, DEFENDANT failed and
22 continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
23 members for their overtime and double time hours worked, meal and rest period premiums, and
24 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
25 due them for working overtime without compensation at the correct overtime and double time
26 rates, meal and rest period premiums, and sick pay rates. DEFENDANT's uniform policy and
27 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and
28

1 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
2 law is evidenced by DEFENDANT's business records.

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

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

13 37. However, from time-to-time, when calculating the regular rate of pay, in those pay
14 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
15 time, paid meal and rest period premium payments, and/or sick pay, and earned this non-
16 discretionary bonus or incentive, DEFENDANTS failed to accurately include the non-
17 discretionary bonus compensation and/or incentive and/or shift differential paid as part of the
18 employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-
19 overtime hours worked. Management and supervisors described the incentive/bonus program to
20 potential and new employees as part of the compensation package. As a matter of law, the
21 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members
22 must be included in the "regular rate of pay." The failure to do so has resulting in a systematic
23 underpayment of overtime and double time compensation, meal and rest period premiums, and
24 redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS Members by
25 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
26 for non-employees shall be calculated in the same manner as the regular rate of pay for the
27 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
28 actually works overtime in that workweek. DEFENDANT's conduct, as articulated herein, by

1 failing to include the incentive compensation as part of the “regular rate of pay” for purposes of
2 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
3 recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

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

15 **F. Violations for Untimely Payment of Wages**

16 39. Pursuant to California Labor Code section 204, PLAINTIFF and the
17 CALIFORNIA CLASS members were entitled to timely payment of wages during their
18 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
19 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
20 meal period premium wages, and rest period premium wages within permissible time period.

21 **G. Unlawful Rounding Violations**

22 40. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place
23 an immutable timekeeping system to accurately record and pay PLAINTIFF and other
24 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
25 overtime hours. Specifically, DEFENDANT had in place an unlawful rounding policy and
26 practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
27 undercompensated for all of their time worked. As a result, DEFENDANT was able to and did in
28 fact unlawfully, and unilaterally round the time recorded in DEFENDANT’S timekeeping system

1 for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying these
2 employees for all their time worked, including the applicable overtime compensation for overtime
3 worked. As a result, PLAINTIFF, and other CALIFORNIA CLASS Members, from time to time,
4 forfeited compensation for their time worked by working without their time being accurately
5 recorded and without compensation at the applicable overtime rates.

6 41. Further, the mutability of DEFENDANT'S timekeeping system and unlawful
7 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
8 being inaccurately recorded. As a result, from time to time, DEFENDANT'S unlawful rounding
9 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
10 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
11 duty meal break. Additionally, DEFENDANT'S unlawful rounding policy and practice caused
12 PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT
13 for more than ten (10) hours during a shift without receiving a second off-duty meal break.

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

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H. Plaintiff's Individual Claims

43. Further, specifically, as to PLAINTIFF, PLAINTIFF is informed and believes, and based upon such information and belief, alleges that during his employment with DEFENDANTS, PLAINTIFF was sexually harassed by one of DEFENDANTS' employees. PLAINTIFF reported the co-worker's conduct to DEFENDANTS' manager. After reporting the sexual harassment, DEFENDANTS, its agents, and its managers began to institute a series of retaliatory employment actions against PLAINTIFF, including but not limited to, terminating PLAINTIFF'S employment in April of 2022.

44. PLAINTIFF is informed and believes, and based upon such information and belief alleges, that, during PLAINTIFF's employment with DEFENDANTS and at the time of his termination, PLAINTIFF was sexually harassed by DEFENDANTS and was treated differently and unfairly by DEFENDANTS and its agents, all in retaliation against PLAINTIFF because of report of sexual harassment.

45. Additionally, PLAINTIFF is mixed race Mexican, Native American, and white. 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'S business in particular is comprised of employees who are not mixed race Mexican, Native American, and white. PLAINTIFF is African-American. PLAINTIFF never felt that he was accepted by DEFENDANT and some of his fellow employees because of his race.

46. PLAINTIFF is informed and believes, and upon such information and belief alleges, that, during PLAINTIFF's employment with DEFENDANT and at the time of his termination, DEFENDANT hired and treated its other employees far better than DEFENDANT treated PLAINTIFF, and solely on the basis of PLAINTIFF'S race.

47. PLAINTIFF is informed and believes, and upon such information and belief alleges that, DEFENDANTS intentionally created or knowingly permitted these working conditions, including but not limited to, discriminatory hiring and promoting practices against employees on the basis of their race.

48. PLAINTIFF is informed and believes, and upon such information and belief alleges, that, DEFENDANTS' conduct in terminating him was part of a systemic pattern of

1 behavior by DEFENDANT aimed at employees like PLAINTIFF because of their race.

2 49. PLAINTIFF is informed and believes, and upon such information and belief
3 alleges that he was harmed as a result of terminated and that the discriminatory hiring and
4 promoting practices of DEFENDANTS were a substantial factor in causing PLAINTIFF'S harm.

5 50. PLAINTIFF filed a complaint with the California Department of Fair Employment
6 and Housing and received a "right to sue" letter on [REDACTED], thereby exhausting his
7 administrative remedies.

8 **I. CLASS ACTION ALLEGATIONS**

9 51. PLAINTIFF brings the First through Seventh Causes of Action as a class action
10 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
11 previously were employed by Defendant Staffmark and/or Defendant Denso International and/or
12 Defendant Denso Products who performed work for Defendant Denso International and/or
13 Defendant Denso Products in California and classified as non-exempt employees
14 ("CALIFORNIA CLASS") during the period beginning four years prior to the filing of the
15 Complaint and ending on a date determined by the Court ("CLASS PERIOD").

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

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

24 54. Common questions of law and fact regarding DEFENDANT's conduct, including
25 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to
26 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
27 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
28 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure

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

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

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

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

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

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

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

9 60. There is a strong community of interest among PLAINTIFF and the members of
10 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
11 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
12 sustained.

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

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

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

27 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
28 which would as a practical matter be dispositive of the interests of the other

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

3 63. Class treatment provides manageable judicial treatment calculated to bring an
4 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
5 the conduct of DEFENDANT.

6 **FIRST CAUSE OF ACTION**

7 **Unlawful Business Practices**

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

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

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

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

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

19 Any person who engages, has engaged, or proposes to engage in unfair competition
20 may be enjoined in any court of competent jurisdiction. The court may make such
21 orders or judgments, including the appointment of a receiver, as may be necessary
22 to prevent the use or employment by any person of any practice which constitutes
23 unfair competition, as defined in this chapter, or as may be necessary to restore to
24 any person in interest any money or property, real or personal, which may have
25 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
26 17203).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **SECOND CAUSE OF ACTION**

4 **Failure To Pay Minimum Wages**

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

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

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

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

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

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

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

21 84. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
22 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
23 worked. As set forth herein, DEFENDANT'S uniform policy and practice was to unlawfully and
24 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
25 CALIFORNIA CLASS.

26 85. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
28

1 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
2 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

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

12 88. During the CLASS PERIOD, PLAINTIFF and the other members of the
13 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
14 failure to pay all earned wages.

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

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

27 91. In performing the acts and practices herein alleged in violation of California labor
28 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked

1 and provide them with the requisite compensation, DEFENDANT acted and continues to act
2 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
3 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
4 consequences to them, and with the despicable intent of depriving them of their property and legal
5 rights, and otherwise causing them injury in order to increase company profits at the expense of
6 these employees.

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

18 **THIRD CAUSE OF ACTION**

19 **Failure To Pay Overtime Compensation**

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

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

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

25 94. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
26 for DEFENDANT's willful and intentional violations of the California Labor Code and the
27 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
28

1 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
2 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

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

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

1 101. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
2 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
3 compensation for overtime worked.

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

12 103. During the CLASS PERIOD, PLAINTIFF and the other members of the
13 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
14 constituting a failure to pay all earned wages.

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

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

26 106. DEFENDANT knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
28 DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
2 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
3 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

113. 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.

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

115. 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 rest period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday that rest
2 period was not provided.

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code §§ 226)**

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

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

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

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

- 1 h. the name and address of the legal entity that is the employer, and
2 i. all applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee.

4 119. From time to time during the CLASS PERIOD, when PLAINTIFF and other
5 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
6 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
7 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
8 wage statements which failed to show, among other things, the total hours worked and all
9 applicable hourly rates in effect during the pay period and the corresponding amount of time
10 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
11 periods. Further, from time to time, DEFENDANT failed to list the accurate name and address of
12 the legal entity that was PLAINTIFF'S and other CALIFORNIA CLASS Members' employer. In
13 addition, DEFENDANT, from time to time, failed to provide PLAINTIFF and the CALIFORNIA
14 CLASS Members with wage statements that comply with Cal. Lab. Code § 226. DEFENDANT
15 knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and
16 damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages
17 include, but are not limited to, costs expended calculating the correct wages for all missed meal
18 and rest breaks and the amount of employment taxes which were not properly paid to state and
19 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the
20 other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty
21 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars
22 (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an
23 amount according to proof at the time of trial (but in no event more than four thousand dollars
24 (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

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

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

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

9 As used in this article:

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

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

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

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

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

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

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

126. 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.

127. 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.

EIGHTH 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)

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

129. 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.

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

131. PLAINTIFF raised complaints of illegality while he worked for DEFENDANTS, and DEFENDANTS retaliated against him by taking adverse employment actions, including terminating PLAINTIFF's employment.

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

133. As a result of DEFENDANTS' adverse employment actions against PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to proof.

134. DEFENDANTS' misconduct was committed intentionally, in a malicious, oppressive manner, and fraudulent manner, entitling PLAINTIFF to punitive damages against DEFENDANTS.

NINTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(By PLAINTIFF and against all DEFENDANTS)

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

136. PLAINTIFF's wrongful termination on or about April, 2022, was for a pretextual reason(s) to disguise DEFENDANTS' unlawful employment practices directed at PLAINTIFF.

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

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

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

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

141. PLAINTIFF was harmed by DEFENDANT'S wrongful and illegal termination of his employment.

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

143. On , PLAINTIFF filed a complaint with the Department of Fair Employment & Housing (“DFEH”), and received an immediate Right to Sue that same day. (See Exhibit #1).

TENTH CAUSE OF ACTION

**VIOLATION OF GOVERNMENT CODE §12940 et seq. – RACIAL AND SEX
DISCRIMINATION**

(By PLAINTIFF and against all DEFENDANTS)

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

145. PLAINTIFF was employed by DEFENDANTS.

146. DEFENDANTS are employers covered by Government Code §12940 et seq.

147. PLAINTIFF was terminated from his employment and/or suffered other adverse employment actions.

148. PLAINTIFF'S race, sexual harassment by DEFENDANTS, and reporting of sexual harassment thereof to DEFENDANTS, was a substantial motivating reason(s) for his termination and other adverse employment actions.

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

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

PRAYER FOR RELIEF

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

1. On behalf of the CALIFORNIA CLASS:

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

b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;

c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and

d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

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

b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the

1 applicable CLASS PERIOD plus interest thereon at the statutory rate;

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

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

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

12 3. On PLAINTIFF'S Eighth through Tenth Causes of Action:

13 a. For all special damages which were sustained as a result of DEFENDANTS'
14 conduct, including but not limited to, back pay, front pay, lost compensation and
15 job benefits that PLAINTIFF would have received but for the practices of
16 DEFENDANTS.

17 b. For all exemplary damages, according to proof, which were sustained as a result of
18 DEFENDANTS' conduct

19 c. An award of interest, including prejudgment interest at the legal rate.

20 d. Such other and further relief as the Court deems just and equitable.

21 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: June 2, 2022

7 **ZAKAY LAW GROUP, APLC**

8

9 By: 
Shani O. Zakay
10 Attorney for PLAINTIFF

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12

13 **DEMAND FOR A JURY TRIAL**

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

16 DATED: June 2, 2022

17 **ZAKAY LAW GROUP, APLC**

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19 By: 
Shani O. Zakay
20 Attorney for PLAINTIFF

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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Denso International America
Denso Products And Services
c/o CSC Lawyers Inc. Services
2710 Gateway Oaks Dr. Ste 100
Sacramento, CA 95833



9590 9402 7020 1225 2862 25

2. Article Number (Transfer from service label)

7021 2720 0000 9972 7355

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X SHAMEEL MOHAMMED

B. Received by (Printed Name) C. Date of Delivery

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

Lindsay 002-339

3. Service Type

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

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

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

Staffmark Investment LLC
 c/o CSC Lawyers Inc. Services
 2710 Gateway Oaks Dr Ste 150N
 Sacramento, CA 95833



9590 9402 7020 1225 2862 18

2. Article Number (Transfer from service label)

7021 2720 0000 9972 7331

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by AWO CSC of Delivery

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 If YES, enter delivery address below: ☐ No

Lindsay 007-339

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Insured Mail | |
| ☐ Registered Mail Restricted Delivery (\$500) | |

Domestic Return Receipt