

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

ACADEMY VALET PARKING SERVICE, INC., a California Corporation; and DOES 1-50, Inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

CESAR CANDO, an individual, on behalf of himself and on behalf of all persons similarly situated

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

Los Angeles Superior Court
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER:

(Número del Caso): 22STCV21833

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

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

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

Sherri R. Carter Executive Officer / Clerk of Court

DATE: 07/06/2022

(Fecha)

Clerk, by J. Covarrubias, Deputy
(Secretario) (Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served

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

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

[SEAL]



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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF LOS ANGELES**

CESAR CANDO, an individual, on behalf of
 himself and on behalf of all persons similarly
 situated,

Plaintiff,

v.

ACADEMY VALET PARKING SERVICE,
 INC., a California Corporation; and DOES 1-
 50, Inclusive,

Defendants.

Case No: **22STCV21833**

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; and
8) FAILURE TO PAY VACATION WAGES
WHEN DUE IN VIOLATION OF CAL.
LAB. CODE § 227.3; and
9) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ

DEMAND FOR A JURY TRIAL

Plaintiff CESAR CANDO (“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 ACADEMY VALET PARKING SERVICE, INC. (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Los Angeles.

2. DEFENDANT is a company that offers valet parking and shuttle services in the State of California, including Los Angeles County, where PLAINTIFF worked.

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

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

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

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

20 7. PLAINTIFF was employed by DEFENDANT in California from 2017 to June of
21 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
22 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
23 and overtime wages due for all time worked.

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

1 9. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
3 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
4 lawfully compensate these employees.

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

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

13 **JURISDICTION AND VENUE**

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

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

23 **THE CONDUCT**

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

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

10 **A. Meal Period Violations**

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

27 16. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
28 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other

1 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
2 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
3 other CALIFORNIA CLASS Members were required from time to time to perform work as
4 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
5 meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
6 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
7 these employees were required by DEFENDANTS to work ten (10) hours of work from time to
8 time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS
9 Members does not qualify for limited and narrowly construed “on-duty” meal period exception.
10 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS
11 Members were, from time to time, required to remain on premises, on duty, and on call.
12 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
13 wages *in lieu* thereof. Further, from time to time, PLAINTIFF and other CALIFORNIA CLASS
14 Members were required to remain on duty, on call, and/or on the premises, and respond to
15 emergencies and/or assist customers during what was supposed to be their off-duty meal periods.
16 PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks without
17 additional compensation and in accordance with DEFENDANTS’ strict corporate policy and
18 practice.

19 **B. Rest Period Violations**

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

1 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or
2 on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
3 hour wages *in lieu* thereof. Further, from time to time, PLAINTIFF and other CALIFORNIA
4 CLASS Members were required to remain on duty, on call, and/or on the premises, and respond
5 to emergencies and/or assist customers during what was supposed to be their off-duty rest periods.
6 As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing,
7 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
8 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

9 **C. Unlawful Rounding Violations**

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

22 19. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
23 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
24 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
25 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
26 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
27 off-duty meal break. Additionally, DEFENDANTS' unlawful rounding policy and practice
28 caused PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by

1 DEFENDANTS for more than ten (10) hours during a shift without receiving a second off-duty
2 meal break.

3 **D. Wage Statement Violations**

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

12 21. From time to time during the CLASS PERIOD, when PLAINTIFF and other
13 CALIFORNIA CLASS Members missed meal and rest breaks, or were not paid for all hours
14 worked, DEFENDANTS failed to provide PLAINTIFF and other CALIFORNIA CLASS
15 Members with complete and accurate wage statements that include, among other things, the total
16 hours worked, all applicable hourly rates in effect during the pay period, and the corresponding
17 amount of time worked at each hourly rate. Further, from time to time, DEFENDANTS included
18 Sick hours into the computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2),
19 notwithstanding the fact that Sick hours are not considered hours worked. DEFENDANTS'
20 inclusion of Sick hours into the total hours worked in itemized wage statements issued to
21 PLAINTIFF and other CALIFORNIA CLASS Members violates Cal. Lab. Code § 226(a)(2).

22 22. In addition to the violations described above, DEFENDANTS, from time to time,
23 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
24 that comply with Cal. Lab. Code § 226.

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

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

2 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
3 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
4 CLASS for all hours worked.

5 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required
6 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work pre-shift and
7 during a scheduled meal break while off-the-clock. Specifically, PLAINTIFF and other members
8 of the CALIFORNIA CLASS were required to undergo Covid-19 health screenings before
9 clocking-in for their shift. As part of the Covid-19 health screenings, PLAINTIFF and other
10 members of the CALIFORNIA CLASS were required to undergo temperature checks. In order to
11 get their temperatures taken, PLAINTIFF and other members of the CLIAFORNIA CLASS were
12 required to go down the basement of DEFENDANTS' workplace and wait in line to have their
13 temperature taken before clocking-in for their shifts. Additionally, from time-to-time,
14 DEFENDANTS required PLAINTIFF and other members of the CALIFORNIA CLASS to
15 perform pre-shift work, including donning and doffing related to DEFENDANTS' requirement
16 that PLAINTIFF and other members of the CALIFORINA CLASS wear protective gear,
17 including masks and gloves, during their shifts. PLAINTIFF and other members of the
18 CALIFORNIA CLASS were required to put on and take off the protective gear at
19 DEFENDANTS' workplace, off-the-clock pre-shift and post-shift. Further, as discussed *supra*,
20 PLAINTIFF and other members of the CALIFORNIA CLASS were from time-to-time
21 interrupted with work related tasks during their off-duty meal periods without additional
22 compensation from DEFENDANTS. This resulted in PLAINTIFF and other members of the
23 CALIFORNIA CLASS having to work while off-the-clock.

24 26. DEFENDANTS directed and directly benefited from the uncompensated off-the-
25 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

1 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
2 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS 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, including pre-shift, post-shift, and during
5 meal period off-the-clock work.

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

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

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

15 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
16 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
17 for the time spent performing work before and after shifts, and responding to emergencies and/or
18 assisting customers outside of their scheduled shifts and working while clocked out for meal
19 periods. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members
20 of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is
21 evidenced by DEFENDANTS' business records.

22 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
23 **and Sick Pay**

24 33. From time-to-time during the CLASS PERIOD, DEFENDANT failed and
25 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
26 members for their overtime and double time hours worked, meal and rest period premiums, and
27 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
28 due them for working overtime without compensation at the correct overtime and double time

1 rates, meal and rest period premiums, and sick pay rates. DEFENDANT's uniform policy and
2 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and
3 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
4 law is evidenced by DEFENDANT's business records.

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

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

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

1 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by
2 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of
3 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
4 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

16 **G. Unpaid Vacation/Paid Time Off**

17 38. Further, upon PLAINTIFF's and CALIFORNIA CLASS Members' separation of
18 employment, they had not used all of their vested vacation and/or paid time off (PTO) time and
19 thus their unused, vested vacation and/or PTO time was required to have been paid at their final
20 rate upon separation of employment. DEFENDANTS, however failed to pay the vested, but
21 unused vacation and/or PTO time, and when it did, it paid it at the wrong rate. As a result,
22 DEFENDANTS violated Labor Code §227.3.

23 **H. Failure to Timely Pay Wages Earned and Unpaid**

24 39. DEFENDANTS, from time-to-time, failed to timely pay PLAINTIFF and other
25 CLASS MEMBERS for wages earned and unpaid at the time of discharge. However, despite
26 DEFENDANT'S failure to pay wages earned and unpaid immediately at the time of discharge,
27 DEFENDANTS from time-to-time failed to pay waiting time penalties as required by Cal. Lab.
28 Code §203. Pursuant to California Labor Code section 204, PLAINTIFF and the CALIFORNIA

1 CLASS members were entitled to timely payment of wages during their employment.
2 PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not receive payment
3 of all wages, including, but not limited to, overtime wages, minimum wages, meal period
4 premium wages, and rest period premium wages within permissible time period. As a result,
5 DEFENDANTS violated Labor Code Sections 201, 202, 203 and/or 204.

6 **I. Unlawful Deductions**

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

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

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1 **J. CLASS ACTION ALLEGATIONS**

2 42. PLAINTIFF brings the First through Eighth Causes of Action as a class action
3 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS’ current
4 and former non-exempt California employees (“CALIFORNIA CLASS”) during the period
5 beginning four years prior to the filing of the Complaint and ending on a date determined by the
6 Court (“CLASS PERIOD”).

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

14 44. The members of the class are so numerous that joinder of all class members is
15 impractical.

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

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

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

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

21 48. PLAINTIFF will fairly and adequately represent and protect the interests of the
22 CALIFORNIA CLASS Members.

23 49. PLAINTIFF retained able class counsel with extensive experience in class action
24 litigation.

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

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

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

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

5 55. 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 56. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

19 58. By the conduct alleged herein, DEFENDANT has engaged and continues to
20 engage in a business practice which violates California law, including but not limited to, the
21 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
22 including Sections 201, 202, 203, 204, 221, 226, 226.7, 227.3, 246, 510, 512, 558, 1194, 1197,
23 1197.1, 1198, 2802, for which this Court should issue declaratory and other equitable relief
24 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the
25 conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

26 65. By and through the unlawful and unfair business practices described herein,
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
28 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and

1 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
2 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
3 to unfairly compete against competitors who comply with the law.

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

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

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

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

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

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

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

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

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

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

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

23 85. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
24 for DEFENDANT's willful and intentional violations of the California Labor Code and the
25 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
26 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
27 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.
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1 86. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
2 public policy, an employer must timely pay its employees for all hours worked.

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

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

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

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

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

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1 92. 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 93. 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 94. 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 95. 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 96. 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 97. DEFENDANTS 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 98. 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 99. 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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103. 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)

104. 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.

105. 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. 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.

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

/ / /

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

SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code §§ 226)

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

108. 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.

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

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

- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

110. 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, DEFENDANTS 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, and correct rates of pay for penalty payments or missed meal and rest periods. Further, from time to time, DEFENDANTS included Sick hours into the computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2), notwithstanding the fact that Sick hours are not considered hours worked. DEFENDANTS' inclusion of Sick hours into the total hours worked in itemized wage statements issued to PLAINTIFF and other CALIFORNIA CLASS Members violates Cal. Lab. Code § 226(a)(2).

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

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

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)**

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

8 114. 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.

16 115. 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."

19 116. 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.

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

118. Cal. Lab. Code § 203 provides:

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

119. 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.

120. In addition to the foregoing, DEFENDANTS from time-to-time, did not pay PLAINTIFF and other members of the CALIFORNIA CLASS wages earned and unpaid at the time of discharge nor did DEFENDANTS pay the wage of the employee as a penalty from the due date thereof at the same rate until paid or until an action commenced.

121. 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

FOR FAILURE TO PAY VACATION WAGES

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

122. 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.

123. At all relevant times, California Labor Code §227.3 provides for the following:

Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

124. At all times relevant, including at times throughout the four-year period preceding the filing of the original complaint, PLAINTIFF, and upon information and belief, and

1 CALIFORNIA CLASS Members were subject to an employer policy and/or contract of
2 employment that provided for paid vacations and/or paid time off (“PTO”) not otherwise
3 provided by a collective-bargaining agreement. Upon PLAINTIFF’s and CALIFORNIA
4 CLASS Members' separation of employment, they had not used all of their vested vacation
5 and/or PTO and thus their unused, vested vacation and/or PTO was required to have been paid
6 at their final rate upon separation of employment. As a result of the miscalculation,
7 DEFENDANTS violated Labor Code §227.3.

8 125. PLAINTIFF seeks, on his behalf and on behalf of the CALIFORNIA CLASS, all
9 damages and remedies available under California Labor Code §227.3, including payment of the
10 vacation and/or PTO wages at the final rate.

11 **NINTH CAUSE OF ACTION**

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

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

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

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

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

26 128. PLAINTIFF, and such persons that may be added from time to time who satisfy
27 the requirements and exhaust the administrative procedures under the Private Attorney General
28 Act, bring this Representative Action on behalf of the State of California with respect to himself

1 and all non-exempt and exempt employees who worked for Defendant in California during the
2 time period of April 28, 2021 until the present (the "AGGRIEVED EMPLOYEES").

3 129. On April 28, 2022, PLAINTIFF gave written notice by certified mail to the Labor
4 and Workforce Development Agency (the "Agency") and the employer of the specific
5 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
6 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
7 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
8 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
9 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
10 EMPLOYEES as herein defined.

11 130. The policies, acts and practices heretofore described were and are an unlawful
12 business act or practice because DEFENDANTS (a) failed to pay PLAINTIFF and other
13 AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide
14 PLAINTIFF and other AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c)
15 failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES at the correct regular rate of
16 pay, (d) failed to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time
17 worked, and (e) failed to timely pay wages, all in violation of the applicable Labor Code sections
18 listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203,
19 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194,
20 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Cal. Bus. & Prof. Code §§17200 and 17203,
21 and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a
22 result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the
23 Labor Code Private Attorney General Act of 2004 as the representative of the State of California
24 for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES

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1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

15 2. On behalf of the CALIFORNIA CLASS:

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
17 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
18 to Cal. Code of Civ. Proc. § 382;
19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for overtime compensation and separately owed rest periods, due to
21 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
22 applicable CLASS PERIOD plus interest thereon at the statutory rate;
23 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
24 the applicable IWC Wage Order;
25 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
26 which a violation occurs and one hundred dollars (\$100) per each member of the
27 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
28 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for

violation of Cal. Lab. Code § 226

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

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004;

4. On all claims:

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

DATED: July 6, 2022

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: July 6, 2022

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorney for PLAINTIFF

EXHIBIT 1



Client # 48701

April 28, 2022

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

ACADEMY VALET PARKING SERVICE, INC.

c/o Oscar Moreno

8300 Beverly Boulevard

Los Angeles, CA 90048

Sent via Certified Mail and Return Receipt No. 7021 2720 0000 9972 6785

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, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff CESAR CANDO (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant ACADEMY VALET PARKING SERVICE, INC. (“Defendant”). Plaintiff was employed by Defendant in California from 2017 to June of 2021 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

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

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

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

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

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Shani O. Zakay", with a stylized flourish at the end.

Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CESAR CANDO, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

ACADEMY VALET PARKING SERVICE,
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;

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- 7) FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE § 226;
8) FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203; and
9) FAILURE TO PAY VACATION WAGES
WHEN DUE IN VIOLATION OF CAL.
LAB. CODE § 227.3.

DEMAND FOR A JURY TRIAL

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Plaintiff CESAR CANDO (“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 ACADEMY VALET PARKING SERVICE, INC. (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Los Angeles.

2. DEFENDANT is a company that offers valet parking and shuttle services in the State of California, including Los Angeles County, where PLAINTIFF worked.

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

4. The agents, servants, and/or employees of the Defendants and each of them acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.

1 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
2 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
3 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
4 Defendants' agents, servants and/or employees.

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

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

16 7. PLAINTIFF was employed by DEFENDANT in California from 2017 to June of
17 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
18 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
19 and overtime wages due for all time worked.

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

26 9. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
27 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
28 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
lawfully compensate these employees.

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

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

9 **JURISDICTION AND VENUE**

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

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

19 **THE CONDUCT**

20 14. In violation of the applicable sections of the California Labor Code and the
21 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
22 matter of company policy, practice and procedure, intentionally, knowingly and systematically
23 failed to provide legally compliant meal and rest periods, failed to accurately compensate
24 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
25 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
26 time worked, failed compensate PLAINTIFF for off-the-clock work, and failed to issue to
27 PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage
28 statements showing, among other things, the total hours worked and all applicable hourly rates in
effect during the pay periods and the corresponding amount of time worked at each hourly rate.

1 DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate
2 and full payment for all time worked as required by California law which allows DEFENDANTS
3 to illegally profit and gain an unfair advantage over competitors who comply with the law. To
4 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
5 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

6 **A. Meal Period Violations**

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

23 16. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
24 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
25 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
26 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
27 other CALIFORNIA CLASS Members were required from time to time to perform work as
28 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a

1 meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
2 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
3 these employees were required by DEFENDANTS to work ten (10) hours of work from time to
4 time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS
5 Members does not qualify for limited and narrowly construed “on-duty” meal period exception.
6 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS
7 Members were, from time to time, required to remain on premises, on duty, and on call.
8 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
9 wages *in lieu* thereof. Further, from time to time, PLAINTIFF and other CALIFORNIA CLASS
10 Members were required to remain on duty, on call, and/or on the premises, and respond to
11 emergencies and/or assist customers during what was supposed to be their off-duty meal periods.
12 PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks without
13 additional compensation and in accordance with DEFENDANTS’ strict corporate policy and
14 practice.

15 **B. Rest Period Violations**

16 17. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
17 CALIFORNIA CLASS members were also required from time to time to work in excess of four
18 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
19 requirements and DEFENDANTS’ inadequate staffing. Further, for the same reasons these
20 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
21 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
22 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
23 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
24 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
25 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or
26 on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
27 hour wages *in lieu* thereof. Further, from time to time, PLAINTIFF and other CALIFORNIA
28 CLASS Members were required to remain on duty, on call, and/or on the premises, and respond

1 to emergencies and/or assist customers during what was supposed to be their off-duty rest periods.
2 As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing,
3 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
4 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

5 **C. Unlawful Rounding Violations**

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

18 19. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
19 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
20 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
21 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
22 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
23 off-duty meal break. Additionally, DEFENDANTS' unlawful rounding policy and practice
24 caused PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by
25 DEFENDANTS for more than ten (10) hours during a shift without receiving a second off-duty
26 meal break.

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1 **D. Wage Statement Violations**

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

10 21. From time to time during the CLASS PERIOD, when PLAINTIFF and other
11 CALIFORNIA CLASS Members missed meal and rest breaks, or were not paid for all hours
12 worked, DEFENDANTS failed to provide PLAINTIFF and other CALIFORNIA CLASS
13 Members with complete and accurate wage statements that include, among other things, the total
14 hours worked, all applicable hourly rates in effect during the pay period, and the corresponding
15 amount of time worked at each hourly rate. Further, from time to time, DEFENDANTS included
16 Sick hours into the computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2),
17 notwithstanding the fact that Sick hours are not considered hours worked. DEFENDANTS'
18 inclusion of Sick hours into the total hours worked in itemized wage statements issued to
19 PLAINTIFF and other CALIFORNIA CLASS Members violates Cal. Lab. Code § 226(a)(2).

20 22. In addition to the violations described above, DEFENDANTS, from time to time,
21 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
22 that comply with Cal. Lab. Code § 226.

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

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

2 24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
3 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
4 CLASS for all hours worked.

5 25. During the CLASS PERIOD, from time-to-time DEFENDANTS required
6 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work pre-shift and
7 during a scheduled meal break while off-the-clock. Specifically, PLAINTIFF and other members
8 of the CALIFORNIA CLASS were required to undergo Covid-19 health screenings before
9 clocking-in for their shift. As part of the Covid-19 health screenings, PLAINTIFF and other
10 members of the CALIFORNIA CLASS were required to undergo temperature checks. In order to
11 get their temperatures taken, PLAINTIFF and other members of the CLIAFORNIA CLASS were
12 required to go down the basement of DEFENDANTS' workplace and wait in line to have their
13 temperature taken before clocking-in for their shifts. Additionally, from time-to-time,
14 DEFENDANTS required PLAINTIFF and other members of the CALIFORNIA CLASS to
15 perform pre-shift work, including donning and doffing related to DEFENDANTS' requirement
16 that PLAINTIFF and other members of the CALIFORINA CLASS wear protective gear,
17 including masks and gloves, during their shifts. PLAINTIFF and other members of the
18 CALIFORNIA CLASS were required to put on and take off the protective gear at
19 DEFENDANTS' workplace, off-the-clock pre-shift and post-shift. Further, as discussed *supra*,
20 PLAINTIFF and other members of the CALIFORNIA CLASS were from time-to-time
21 interrupted with work related tasks during their off-duty meal periods without additional
22 compensation from DEFENDANTS. This resulted in PLAINTIFF and other members of the
23 CALIFORNIA CLASS having to work while off-the-clock.

24 26. DEFENDANTS directed and directly benefited from the uncompensated off-the-
25 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

1 28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
2 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS 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, including pre-shift, post-shift, and during
5 meal period off-the-clock work.

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

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

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

15 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
16 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
17 for the time spent performing work before and after shifts, and responding to emergencies and/or
18 assisting customers outside of their scheduled shifts and working while clocked out for meal
19 periods. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members
20 of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is
21 evidenced by DEFENDANTS' business records.

22 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
23 **and Sick Pay**

24 33. From time-to-time during the CLASS PERIOD, DEFENDANT failed and
25 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
26 members for their overtime and double time hours worked, meal and rest period premiums, and
27 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
28 due them for working overtime without compensation at the correct overtime and double time

1 rates, meal and rest period premiums, and sick pay rates. DEFENDANT's uniform policy and
2 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and
3 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
4 law is evidenced by DEFENDANT's business records.

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

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

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

1 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by
2 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of
3 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
4 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

16 **G. Unpaid Vacation/Paid Time Off**

17 38. Further, upon PLAINTIFF's and CALIFORNIA CLASS Members' separation of
18 employment, they had not used all of their vested vacation and/or paid time off (PTO) time and
19 thus their unused, vested vacation and/or PTO time was required to have been paid at their final
20 rate upon separation of employment. DEFENDANTS, however failed to pay the vested, but
21 unused vacation and/or PTO time, and when it did, it paid it at the wrong rate. As a result,
22 DEFENDANTS violated Labor Code §227.3.

23 **H. Failure to Timely Pay Wages Earned and Unpaid**

24 39. DEFENDANTS, from time-to-time, failed to timely pay PLAINTIFF and other
25 CLASS MEMBERS for wages earned and unpaid at the time of discharge. However, despite
26 DEFENDANT'S failure to pay wages earned and unpaid immediately at the time of discharge,
27 DEFENDANTS from time-to-time failed to pay waiting time penalties as required by Cal. Lab.
28 Code §203. Pursuant to California Labor Code section 204, PLAINTIFF and the CALIFORNIA

1 CLASS members were entitled to timely payment of wages during their employment.
2 PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not receive payment
3 of all wages, including, but not limited to, overtime wages, minimum wages, meal period
4 premium wages, and rest period premium wages within permissible time period. As a result,
5 DEFENDANTS violated Labor Code Sections 201, 202, 203 and/or 204.

6 **I. Unlawful Deductions**

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

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

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1 **J. CLASS ACTION ALLEGATIONS**

2 42. PLAINTIFF brings the First through Eighth Causes of Action as a class action
3 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS’ current
4 and former non-exempt California employees (“CALIFORNIA CLASS”) during the period
5 beginning four years prior to the filing of the Complaint and ending on a date determined by the
6 Court (“CLASS PERIOD”).

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

14 44. The members of the class are so numerous that joinder of all class members is
15 impractical.

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

5 55. 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 56. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

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

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

19 58. By the conduct alleged herein, DEFENDANT has engaged and continues to
20 engage in a business practice which violates California law, including but not limited to, the
21 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
22 including Sections 201, 202, 203, 204, 221, 226, 226.7, 227.3, 246, 510, 512, 558, 1194, 1197,
23 1197.1, 1198, 2802, for which this Court should issue declaratory and other equitable relief
24 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the
25 conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

26 65. By and through the unlawful and unfair business practices described herein,
27 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
28 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and

1 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
2 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
3 to unfairly compete against competitors who comply with the law.

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

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

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

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

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

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

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

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

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

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

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

23 85. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
24 for DEFENDANT's willful and intentional violations of the California Labor Code and the
25 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
26 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
27 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.
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1 86. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
2 public policy, an employer must timely pay its employees for all hours worked.

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

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

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

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

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

1 92. 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 93. 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 94. 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 95. 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 96. 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 97. DEFENDANTS 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 98. 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 99. 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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1 103. As a proximate result of the aforementioned violations, PLAINTIFF and
2 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
3 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

4 **FIFTH CAUSE OF ACTION**

5 **Failure To Provide Required Rest Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code §§ 226)

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

108. 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.

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

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

- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

110. 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, DEFENDANTS 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, and correct rates of pay for penalty payments or missed meal and rest periods. Further, from time to time, DEFENDANTS included Sick hours into the computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2), notwithstanding the fact that Sick hours are not considered hours worked. DEFENDANTS' inclusion of Sick hours into the total hours worked in itemized wage statements issued to PLAINTIFF and other CALIFORNIA CLASS Members violates Cal. Lab. Code § 226(a)(2).

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

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

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)**

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

8 114. 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.

16 115. 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."

19 116. 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.

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

118. Cal. Lab. Code § 203 provides:

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

119. 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.

120. In addition to the foregoing, DEFENDANTS from time-to-time, did not pay PLAINTIFF and other members of the CALIFORNIA CLASS wages earned and unpaid at the time of discharge nor did DEFENDANTS pay the wage of the employee as a penalty from the due date thereof at the same rate until paid or until an action commenced.

121. 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

FOR FAILURE TO PAY VACATION WAGES

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

122. 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.

123. At all relevant times, California Labor Code §227.3 provides for the following:

Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

124. At all times relevant, including at times throughout the four-year period preceding the filing of the original complaint, PLAINTIFF, and upon information and belief, and

CALIFORNIA CLASS Members were subject to an employer policy and/or contract of employment that provided for paid vacations and/or paid time off (“PTO”) not otherwise provided by a collective-bargaining agreement. Upon PLAINTIFF’s and CALIFORNIA CLASS Members' separation of employment, they had not used all of their vested vacation and/or PTO and thus their unused, vested vacation and/or PTO was required to have been paid at their final rate upon separation of employment. As a result of the miscalculation, DEFENDANTS violated Labor Code §227.3.

125. PLAINTIFF seeks, on his behalf and on behalf of the CALIFORNIA CLASS, all damages and remedies available under California Labor Code §227.3, including payment of the vacation and/or PTO wages at the final rate.

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

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

20 DATED: April 28, 2022

ZAKAY LAW GROUP, APLC

21 By:  _____

22 Shani O. Zakay
23 Attorney for PLAINTIFF
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DEMAND FOR A JURY TRIAL

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

DATED: April 28, 2022

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay

Attorney for PLAINTIFF

7021 2720 0000 9972 6785

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