

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

PACIFIC PRODUCTION PLUMBING, a California corporation; and
DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

THOMAS E. WEATHERMON III, an individual, on behalf of himself
and on behalf of all persons similarly situated,

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

02/14/2023 at 12:01:00 AM

Clerk of the Superior Court
By Alma Rhodes, Deputy Clerk

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):

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

CASE NUMBER:

(Número del Caso): 37-2023-00006167-CU-0E-CTL

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

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

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (858) 599-8291

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

DATE: 02/14/2023

(Fecha)

Clerk, by _____

(Secretario)

A. Rhodes

A. Rhodes

_____, Deputy

(Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ 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):

- ☐ by personal delivery on (date):

[SEAL]



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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Alma Rhodes, Deputy Clerk

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

THOMAS E. WEATHERMON III, an
individual, on behalf of himself and on behalf of
all persons similarly situated,

Plaintiff,

v.

PACIFIC PRODUCTION PLUMBING, a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No: 37-2023-00006167-CU-OE-CTL

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;

- 1 8) FAILURE TO REIMBURSE EMPLOYEES
2 FOR REQUIRED EXPENSES IN
3 VIOLATION OF CAL. LAB. CODE § 2802;
4 9) RETALIATION IN VIOLATION OF CAL.
5 LAB. CODE §§ 98.6 and 1102.5;
6 10) VIOLATION OF THE PRIVATE
7 ATTORNEYS GENERAL ACT [LABOR
8 CODE §§ 2698 ET SEQ.

9 **DEMAND FOR A JURY TRIAL**

10 Plaintiff THOMAS E. WEATHERMON III (“PLAINTIFF”), an individual, on behalf
11 of himself and all other similarly situated current and former employees, alleges on information and
12 belief, except for his own acts and knowledge which are based on personal knowledge, the
13 following:

14 **THE PARTIES**

15 1. Defendant PACIFIC PRODUCTION PLUMBING (“DEFENDANT” and/or
16 “DEFENDANTS”) is a California corporation that at all relevant times mentioned herein
17 conducted and continues to conduct substantial and regular business in the state of California

18 2. DEFENDANTS provide plumbing services to private, commercial and
19 construction company customers in the state of California, including San Diego County, where
20 PLAINTIFF worked.

21 3. PLAINTIFF has been employed by DEFENDANTS in California since August of
22 2018 as a foreman, and was at all times classified by DEFENDANTS as a non-exempt employee,
23 paid on a piece-rate basis, and entitled to the legally required meal and rest periods and payment
24 of minimum and overtime wages due for all time worked. PLAINTIFF was paid by piece-rate
25 only while he was performing installation jobs for DEFENDANTS in accordance with
26 DEFENDANTS’ compensation package. Importantly, PLAINTIFF was not provided with
27 minimum wages for his non-production work time. PLAINTIFF also did not receive paid rest
28 breaks as required by California law. DEFENDANTS failed to pay PLAINTIFF the correct
amount of compensation because DEFENDANTS established an illegal pay practice of paying
PLAINTIFF on a piece rate basis when conducting installation jobs assigned by DEFENDANTS.
DEFENDANTS however failed to pay minimum wages for compensable time worked, including
time spent traveling between jobs, and time spent preparing for jobs by purchasing and gathering

1 the required materials for each job. DEFENDANTS also failed to pay PLAINTIFF any overtime
2 wages for all overtime worked, thereby uniformly resulting in PLAINTIFF being underpaid for
3 all time worked during his employment, including overtime worked. To date, DEFENDANTS
4 have not fully and timely paid the PLAINTIFF for all his wages still owed to him or any penalty
5 wages owed to him under California Labor Code § 203.

6 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
7 defined as all persons who are or previously were employed by DEFENDANTS in California who
8 were classified as non-exempt employees, including those who were paid in whole or in part on
9 a piece rate basis (the “CALIFORNIA CLASS”) at any time during the period beginning four
10 years from the date of filing of this Complaint and ending on the date as determined by the Court
11 (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
12 the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

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

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

1 is informed and believes, and based upon that information and belief alleges, that the Defendants
2 named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some
3 manner for one or more of the events and happenings that proximately caused the injuries and
4 damages hereinafter alleged

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

13 **THE CONDUCT**

14 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
15 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
16 meaning the time during which an employee is subject to the control of an employer, including
17 all the time the employee is suffered or permitted to work. DEFENDANTS required PLAINTIFF
18 and CALIFORNIA CLASS Members to work without paying them for all the time they were
19 under DEFENDANTS' control. Importantly, PLAINTIFF was not provided with minimum wages
20 for all of his non-installation work time when DEFENDANTS only paid PLAINTIFF and other
21 CALIFORNIA CLASS Members a flat piece rate per job, regardless of how many hours were
22 worked, and regardless of how much time was spent working before or after each job. PLAINTIFF
23 also did not receive compliant meal breaks as required by California law when being paid a piece
24 rate by DEFENDANT. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members
25 forfeited minimum wage and overtime compensation by regularly working without their time
26 being accurately recorded and without compensation at the applicable minimum wage and
27 overtime rates, or separate compensation for rest breaks. DEFENDANTS' uniform policy and
28

1 practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked
2 is evidenced by DEFENDANTS' business records.

3 **A. Meal Break Violations**

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

18 10. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
19 requirements and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
20 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
21 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
22 other CALIFORNIA CLASS Members were required from time to time to perform work as
23 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
24 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
25 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
26 these employees were required by DEFENDANT to work ten (10) hours of work from time to
27 time. Specifically, PLAINTIFF and CALIFORNIA CLASS Members were from time to time
28 required to perform work-related tasks for DEFENDANTS' supervisors and clients during what

1 was supposed to be their off-duty meal periods. Additionally, PLAINTIFF and CALIFORNIA
2 CLASS Members were required to carry cordless communication devices in order to receive and
3 respond to work-related communications during their off-duty meal periods. The nature of the
4 work performed by PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for
5 limited and narrowly construed “on-duty” meal period exception. When they were provided with
6 meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
7 required to remain on duty, on call and/or on premises. PLAINTIFF and other CALIFORNIA
8 CLASS Members therefore forfeited meal breaks without additional compensation and in
9 accordance with DEFENDANT’s strict corporate policy and practice.

10 **B. Rest Break Violations**

11 11. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
12 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
13 being provided ten (10) minute rest periods. Further, these employees were denied their first rest
14 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
15 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked
16 of between six (6) and eight (8) hours from time to time, and a first, second and third rest period
17 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
18 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
19 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
20 CALIFORNIA CLASS Members were from time to time denied their proper rest periods by
21 DEFENDANTS and DEFENDANTS’ managers. Additionally, PLAINTIFF and CALIFORNIA
22 CLASS Members were required to carry cordless communication devices in order to receive and
23 respond to work-related communications during their off-duty rest periods. When they were
24 provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were, from
25 time to time, required to remain on duty, on call and/or on premises.

26 12. In addition, because of DEFENDANTS’ pay plan for PLAINTIFF and
27 CALIFORNIA CLASS Members (being paid a flat rate per-job only), DEFENDANTS failed to
28 compensate PLAINTIFF and CALIFORNIA CLASS Members for their rest periods as required

1 by the applicable Wage Order and Labor Code. DEFENDANTS did not have a policy or practice
2 which paid for off-duty rest periods to PLAINTIFF and the other CALIFORNIA CLASS
3 Members when they were paid piece rate pay only. As a result, DEFENDANTS' failure to provide
4 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
5 periods is evidenced by DEFENDANTS' business records.

6 **C. Wage Statement Violations**

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

15 14. When PLAINTIFF and other CALIFORNIA CLASS Members were from time to
16 time required to miss meal and rest breaks, and/or were not paid all minimum and overtime wages
17 owed to them, DEFENDANTS also failed to provide PLAINTIFF and the other members of the
18 CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among
19 other things, the correct wages paid, including the wages paid for missed meal and rest breaks.
20 Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees
21 with an accurate itemized wage statement in writing showing, among other things, gross wages
22 earned and all applicable hourly rates in effect during the pay period and the corresponding
23 amount of time worked at each hourly rate. Aside from the violations listed above in this
24 paragraph, DEFENDANTS failed to issue to PLAINTIFF an itemized wage statement that lists
25 all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANTS from
26 time to time provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
27 wage statements which violated Cal. Lab. Code § 226.

28 ///

1 **D. Unreimbursed Business Expenses**

2 15. DEFENDANTS, as a matter of corporate policy, practice, and procedure,
3 intentionally, knowingly and systematically failed to reimburse and indemnify the PLAINTIFF
4 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
5 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
6 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
7 are required to indemnify employees for all expenses incurred in the course and scope of their
8 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct consequence
10 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
11 even though unlawful, unless the employee, at the time of obeying the directions, believed them
12 to be unlawful."

13 16. In the course of their employment, PLAINTIFF and other CALIFORNIA CLASS
14 Members as a business expense, were required by DEFENDANTS to use their own personal
15 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
16 employees for DEFENDANTS but were not reimbursed or indemnified by DEFENDANTS for
17 the costs associated with the use of their personal cellular phones and personal vehicles for
18 DEFENDANTS' benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members
19 were required by DEFENDANTS to use their personal cell phones and personal vehicles to
20 conduct work related business. As a result, in the course of their employment with DEFENDANT
21 the PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed
22 business expenses which included, but were not limited to, costs related to the use of their personal
23 cellular phones and personal vehicles all on behalf of and for the benefit of DEFENDANTS.

24 **E. Minimum Wage and Overtime Violations**

25 17. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
26 the CALIFORNIA CLASS were paid in part on a piece-rate basis. In those instances where
27 PLAINTIFF and the CALIFORNIA CLASS were paid in part on a piece-rate basis, PLAINTIFF
28 and the CALIFORNIA CLASS were entitled to be separately compensated for all non-productive

1 time at an hourly rate that is no less than the applicable minimum wage. Notwithstanding, in
2 those instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a piece-
3 rate basis, DEFENDANTS failed to separately compensate PLAINTIFF and the CALIFORNIA
4 CLASS for all non-productive time, including but not limited to, paid rest periods, at an hourly
5 rate that is no less than the applicable minimum wage. As a result, PLAINTIFF and the
6 CALIFORNIA CLASS forfeited minimum wages and overtime wages by DEFENDANTS'
7 failure to separately compensate their non-productive time at an hourly rate that is no less than
8 the applicable minimum wage.

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

11 18. From time to time during the CLASS PERIOD, DEFENDANT failed and
12 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
13 Members for their overtime and double time hours worked, meal and rest period premiums, and
14 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
15 forfeited wages due to them for working overtime without compensation at the correct overtime
16 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
17 DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at
18 the correct rate for all overtime and double time worked, meal and rest period premiums, and
19 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT's business
20 records.

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

25
26 20. The second component of PLAINTIFF's and other CALIFORNIA CLASS
27 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
28 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for

1 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
2 basis with bonus compensation when the employees met the various performance goals set by
3 DEFENDANTS.

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

22 22. In violation of the applicable sections of the California Labor Code and the
23 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
24 matter of company policy, practice, and procedure, intentionally and knowingly failed to
25 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
26 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
27 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
28 of the correct overtime and double time compensation, meal and rest period premiums, and sick

1 pay as required by California law which allowed DEFENDANT to illegally profit and gain an
2 unfair advantage over competitors who complied with the law. To the extent equitable tolling
3 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the
4 CLASS PERIOD should be adjusted accordingly.

5 **G. Unlawful Rounding Practices**

6 23. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
7 place an immutable timekeeping system to accurately record and pay PLAINTIFFS 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 PLAINTIFFS 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 PLAINTIFFS 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, PLAINTIFFS and other CALIFORNIA CLASS Members, from
16 time 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 24. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
19 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'
20 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful
21 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
22 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
23 receiving an off-duty meal break.

24 **H. Timekeeping Manipulation**

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

1 and rest breaks. Specifically, due to DEFENDANT's error-prone timekeeping system,
2 approximately five to eight minutes of PLAINTIFF and CALIFORNIA CLASS Member's time
3 worked were taken each day. As a result, DEFENDANT was able to and did in fact, unlawfully,
4 and unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF
5 and other members of the CALIFORNIA CLASS in order to avoid paying these employees for
6 all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
7 missed rest break.

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

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

18 28. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
19 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
20 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and
21 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
22 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
23 records.

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

25 29. Pursuant to California Labor Code section 204, PLAINTIFF and the
26 CALIFORNIA CLASS members were entitled to timely payment of wages during their
27 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
28 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,

1 meal period premium wages, and rest period premium wages within permissible time period.

2 **J. Unlawful Deductions**

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

7 **K. Unfair Competition Violations**

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

17 32. By reason of this uniform conduct applicable to PLAINTIFF and the other
18 CALIFORNIA CLASS Members, DEFENDANTS committed acts of unfair competition in
19 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
20 "UCL"), by engaging in a uniform company-wide policy, practice, and procedure which failed to
21 accurately calculate and record all missed meal and rest periods by PLAINTIFF and other
22 CALIFORNIA CLASS Members. The proper recording of these employees' missed meal and rest
23 breaks is the DEFENDANTS' burden. As a result of DEFENDANTS' intentional disregard of the
24 obligation to meet this burden, DEFENDANTS failed to properly calculate and/or pay all required
25 compensation for work performed by the members of the CALIFORNIA CLASS and violated the
26 California Labor Code and regulations promulgated thereunder as herein alleged.

27 33. Specifically, as to PLAINTIFF, DEFENDANTS failed to provide all the legally
28 required off-duty meal and rest breaks to him as required by the applicable Wage Order and Labor

1 Code and failed to pay him all minimum and overtime wages due to him. DEFENDANTS did not
2 have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF,
3 and also failed to compensate PLAINTIFF for his missed meal and rest breaks. The nature of the
4 work performed by the PLAINTIFF did not prevent him from being relieved of all of his duties
5 for the legally required off-duty meal periods. As a result, DEFENDANTS' failure to provide
6 PLAINTIFF with the legally required meal periods is evidenced by DEFENDANTS' business
7 records. As a result of DEFENDANTS not accurately recording all missed meal and rest periods
8 and/or the correct overtime rate, and/or separately compensated rest breaks, the wage statements
9 issued to PLAINTIFF by DEFENDANTS violated California law, and in particular, Labor Code
10 Section 226(a). To date, DEFENDANTS have yet to pay PLAINTIFF all of his overtime wages
11 due to him and DEFENDANTS has failed to pay any penalty wages owed to him under California
12 Labor Code Section 203 and/or 204. The amount in controversy for PLAINTIFF individually
13 does not exceed the sum or value of \$75,000.

14 **L. Plaintiff's Individual Claims**

15 34. PLAINTIFF has been employed by DEFENDANT in California since August of
16 2018.

17 35. On or around September 27, 2022 and October 27, 2022, PLAINTIFF, through his
18 counsel of record, requested his employee file from DEFENDANT.

19 36. On or around November of 2022, DEFENDANT began instituting a series of
20 adverse employment actions against PLAINTIFF. Specifically, after PLAINTIFF requested his
21 employee file, DEFENDANT began decreasing the amount of compensation PLAINTIFF could
22 earn for his piece-rate work. Additionally, PLAINTIFF began noticing that his vouchers for
23 piece-rate work would go missing, despite having submitted them to DEFENDANT. As a result
24 of the voucher forms going missing, PLAINTIFF'S compensation would also decrease. On
25 information and belief, PLAINTIFF alleges DEFENDANT purposely decreased PLAINTIFF'S
26 piece-rate rates and misplaced his voucher forms as a result of PLAINTIFF requesting his
27 employee file and in retaliation for PLAINTIFF'S legal exercise of his right to do so pursuant to
28 Cal. Lab. Code §§ 226, 432 and 1198.5.

1 37. PLAINTIFF is informed and believes, and upon such information and belief
2 alleges that, DEFENDANT'S conduct in decreasing his piece-rate rates and misplacing his
3 voucher forms was part of a pattern of behavior by DEFENDANT aimed at discrimination,
4 harassment, and retaliation against PLAINTIFF for exercising his legal right to do so pursuant to
5 Cal. Lab. Code §§ 226, 432 and 1198.5.

6 **JURISDICTION AND VENUE**

7 38. This Court has jurisdiction over this Action pursuant to California Code of Civil
8 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
9 action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees
10 of DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

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

16 **THE CALIFORNIA CLASS**

17 40. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
18 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
19 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
20 persons who are or previously were employed by DEFENDANTS in California who were
21 classified as non-exempt employees, including those who were paid in whole or in part on a piece
22 rate basis (the "CALIFORNIA CLASS") at any time during the period beginning four years from
23 the date of the filing of this Complaint and ending on the date as determined by the Court (the
24 "CALIFORNIA 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 41. To the extent equitable tolling operates to toll claims by the CALIFORNIA
27 CLASS against DEFENDANTS, the CALIFORNIA CLASS PERIOD should be adjusted
28 accordingly.

1 42. DEFENDANTS, as a matter of company policy, practice, and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, and
4 willfully, engaged in a practice whereby DEFENDANTS systematically failed to record all meal
5 and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
6 DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and
7 permits or suffers to permit this work.

8 43. DEFENDANTS have the legal burden to establish that each and every
9 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
10 required by California laws. DEFENDANTS, however, as a matter of uniform and systematic
11 policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still
12 fail to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
13 Member is paid as required by law. This common business practice is applicable to each and every
14 CALIFORNIA CLASS Member can be adjudicated on a class- wide basis as unlawful, unfair,
15 and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as
16 causation, damages, and reliance are not elements of this claim.

17 44. The CALIFONRIA CLASS is so numerous that joinder of all CALIFORNIA
18 CLASS Members is impracticable.

19 45. DEFENDANTS uniformly violated the rights of the CALIFORNIA CLASS under
20 California law by:

- 21 a. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
22 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having
23 in place company policies, practices and procedures that uniformly and
24 systematically failed to record and pay PLAINTIFF and the other members of the
25 CALIFORNIA CLASS for all time worked, including minimum wages owed and
26 overtime wages owed for work performed by these employees;

- b. Committing an act of unfair competition in violation of the UCL, by failing to provide mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members; and
- c. Committing an act of unfair competition in violation of the UCL, by failing to separately compensate PLAINTIFF and the CALIFORNIA CLASS Members for their rest breaks.

46. The Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- a. The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on a piece-rate basis who was subjected to the DEFENDANTS' deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby systematically underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANTS' employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANTS; and
- d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and have retained counsel who are competent and experienced in Class Action litigation. There are no material

1 conflicts between the claims of the representative PLAINTIFF and the members
2 of the CALIFORNIA CLASS that would make class certification inappropriate.
3 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
4 CALIFORNIA CLASS Members.

5 47. In addition to meeting the statutory prerequisites to a Class Action, this action is
6 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 7 a. Without class certification and determination of declaratory, injunctive, statutory
8 and other legal questions within the class format, prosecution of separate actions
9 by individual members of the CALIFORNIA CLASS will create the risk of:
- 10 i. Inconsistent or varying adjudications with respect to individual members
11 of the CALIFORNIA CLASS which would establish incompatible
12 standards of conduct for the parties opposing the CALIFORNIA CLASS;
13 and/or;
- 14 ii. Adjudication with respect to individual members of the CALIFORNIA
15 CLASS which would as a practical matter be dispositive of interests of the
16 other members not party to the adjudication or substantially impair or
17 impede their ability to protect their interests.
- 18 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
19 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
20 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
21 DEFENDANTS uniformly failed to pay all wages due to members of the
22 CALIFORNIA CLASS as required by law;
- 23 i. With respect to the First Cause of Action, the final relief on behalf of the
24 CALIFORNIA CLASS sought does not relate exclusively to restitution
25 because through this claim PLAINTIFF seeks declaratory relief holding
26 that the DEFENDANTS' policy and practices constitute unfair
27 competition, along with declaratory relief, injunctive relief, and incidental
28

equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

i. The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

ii. Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

1. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or;

2. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

iii. In the context of wage litigation, because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS or with a subsequent

1 employer, the Class Action is the only means to assert their claims through
2 a representative; and

3 iv. A class action is superior to other available methods for the fair and
4 efficient adjudication of this litigation because class treatment will obviate
5 the need for unduly and unnecessary duplicative litigation that is likely to
6 result in the absence of certification of this action pursuant to Cal. Code of
7 Civ. Proc. § 382.

8 48. The Court should permit this action to be maintained as a Class Action pursuant
9 to Cal. Code of Civ. Proc. § 382 because:

- 10 a. The questions of law and fact common to the CALIFORNIA CLASS predominate
11 over any question affecting only individual CALIFORNIA CLASS Members
12 because the DEFENDANTS' employment practices were uniform and
13 systematically applied with respect to the CALIFORNIA CLASS.
- 14 b. A Class Action is superior to any other available method for the fair and efficient
15 adjudication of the claims of the members of the CALIFORNIA CLASS because
16 in the context of employment litigation a substantial number of individual
17 CALIFORNIA CLASS Members will avoid asserting their rights individually out
18 of fear of retaliation or adverse impact on their employment;
- 19 c. The members of the CALIFORNIA CLASS are so numerous that it is impractical
20 to bring all members of the CALIFORNIA CLASS before the Court;
- 21 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
22 obtain effective and economic legal redress unless the action is maintained as a
23 Class Action;
- 24 e. There is a community of interest in obtaining appropriate legal and equitable relief
25 for the acts of unfair competition, statutory violations and other improprieties, and
26 in obtaining adequate compensation for the damages and injuries which
27 DEFENDANTS' actions have inflicted upon the CALIFORNIA CLASS;
28

- 1 f. There is a community of interest in ensuring that the combined assets of
2 DEFENDANTS are sufficient to adequately compensate the members of the
3 CALIFORNIA CLASS for the injuries sustained;
- 4 g. DEFENDANTS have acted or refused to act on grounds generally applicable to
5 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
6 with respect to the CALIFORNIA CLASS as a whole;
- 7 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
8 business records of DEFENDANTS; and
- 9 i. Class treatment provides manageable judicial treatment calculated to bring an
10 efficient and rapid conclusion to all litigation of all wage and hour related claims
11 arising out of the conduct of DEFENDANTS as to the members of the
12 CALIFORNIA CLASS.

13 49. DEFENDANTS maintain records from which the Court can ascertain and identify
14 by job title each of DEFENDANTS' employees who as have been systematically, intentionally,
15 and uniformly subjected to DEFENDANTS' company policy, practices and procedures as herein
16 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
17 of similarly situated employees when they have been identified.

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 50. PLAINTIFF further brings the Second, Third, Fourth Fifth, Sixth, Seventh, and
20 Eighth causes of Action on behalf of a California sub-class, defined as all persons who are or
21 previously were employed by Defendant Dreamstyle LLC and/or Defendant Dreamstyle Inc.
22 and/or Defendant Dreamstyle Remodeling in California who were classified as non-exempt
23 employees, including those who were paid in whole or in part on a piece rate basis (the
24 "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning three years
25 from the date of the filing of this Complaint and ending on the date as determined by the Court
26 (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382.
27 The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS
28 Members is under five million dollars (\$5,000,000.00).

1 51. DEFENDANTS, as a matter of company policy, practice and procedure, and in
2 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
3 requirements, and the applicable provisions of California law, intentionally, knowingly, willfully,
4 and systematically willfully, engaged in a practice whereby DEFENDANTS failed to correctly
5 calculate compensation for the time worked by PLAINTIFF and the other members of the
6 CALIFORNIA LABOR SUB-CLASS and separately compensated rest breaks owed to these
7 employees, even though DEFENDANTS enjoyed the benefit of this work, required employees to
8 perform this work and permitted or suffered to permit this work. DEFENDANTS have uniformly
9 denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees
10 are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable
11 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
12 DEFENDANTS, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
13 accordingly.

14 52. DEFENDANTS maintain records from which the Court can ascertain and identify
15 by name and job title, each of DEFENDANTS’ employees who have been systematically,
16 intentionally, and uniformly subjected to DEFENDANTS’ company policy, practices, and
17 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include these
18 additional job titles when they have been identified.

19 53. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
20 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

21 54. Common questions of law and fact exist as to members of the CALIFORNIA
22 LABOR SUB-CLASS, including, but not limited, to the following:

- 23 a. Whether DEFENDANTS unlawfully failed to correctly calculate and pay
24 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for
25 minimum wages, overtime wages, missed meal and rest breaks in violation of the
26 California Labor Code and California regulations and the applicable California
27 Wage Order;
28

- b. Whether DEFENDANTS failed to provide the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- c. Whether DEFENDANTS have engaged in unfair competition by the above-listed conduct;
- d. The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and
- e. Whether DEFENDANTS' conduct was willful.

55. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

- a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194;
- b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;
- d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required rest breaks, and to separately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for rest breaks;

- 1 e. Violating Cal. Lab. Code §201, 202 and/or 203, which provides that when an
2 employee is discharged or quits from employment, the employer must pay the
3 employee all wages due without abatement, by failing to tender full payment
4 and/or restitution of wages owed or in the manner required by California law to
5 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
6 their employment.

7 56. This Class Action meets the statutory prerequisites for the maintenance of a Class
8 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 9 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
10 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
11 is impracticable and the disposition of their claims as a class will benefit the parties
12 and the Court;
- 13 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
14 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
15 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-
16 CLASS;
- 17 c. The claims of the representative PLAINTIFF are typical of the claims of each
18 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
19 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt
20 employee paid on a piece-rate basis who was subjected to the DEFENDANTS'
21 practice and policy which failed to pay the correct amount of wages due to the
22 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
23 a result of DEFENDANTS' employment practices. PLAINTIFF and the members
24 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
25 harmed by the same unlawful, deceptive, unfair, and pervasive pattern of
26 misconduct engaged in by DEFENDANTS; and
- 27 d. The representative PLAINTIFF will fairly and adequately represent and protect
28 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel

1 who are competent and experienced in Class Action litigation. There are no
2 material conflicts between the claims of the representative PLAINTIFF and the
3 members of the CALIFORNIA LABOR SUB-CLASS that would make class
4 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
5 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
6 Members.

7 57. In addition to meeting the statutory prerequisites to a Class Action, this action is
8 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

9 a. Without class certification and determination of declaratory, injunctive, statutory
10 and other legal questions within the class format, prosecution of separate actions
11 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
12 the risk of:

13 i. Inconsistent or varying adjudications with respect to individual members
14 of the CALIFORNIA LABOR SUB-CLASS which would establish
15 incompatible standards of conduct for the parties opposing the
16 CALIFORNIA LABOR SUB-CLASS; or

17 ii. Adjudication with respect to individual members of the CALIFORNIA
18 LABOR SUB-CLASS which would as a practical matter be dispositive of
19 interests of the other members not party to the adjudication or substantially
20 impair or impede their ability to protect their interests.

21 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
22 refused to act on grounds generally applicable to the CALIFORNIA LABOR
23 SUB-CLASS, making appropriate class-wide relief with respect to the
24 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANTS
25 uniformly fail to pay all wages due. Including the correct wages for all time worked
26 by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

27 c. Common questions of law and fact predominate as to the members of the
28 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations

1 of California Law as listed above, and predominate over any question affecting
2 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
3 Action is superior to other available methods for the fair and efficient adjudication
4 of the controversy, including consideration of:

- 5 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
6 in individually controlling the prosecution or defense of separate actions in
7 that the substantial expense of individual actions will be avoided to recover
8 the relatively small amount of economic losses sustained by the individual
9 CALIFORNIA LABOR SUB-CLASS Members when compared to the
10 substantial expense and burden of individual prosecution of this litigation;
11 ii. Class certification will obviate the need for unduly duplicative litigation
12 that would create the risk of:

13 1. Inconsistent or varying adjudications with respect to individual
14 members of the CALIFORNIA LABOR SUB-CLASS, which
15 would establish incompatible standards of conduct for the
16 DEFENDANT; and/or,

17 2. Adjudications with respect to individual members of the
18 CALIFORNIA LABOR SUB-CLASS would as a practical matter
19 be dispositive of the interests of the other members not parties to
20 the adjudication or substantially impair or impede their ability to
21 protect their interests;

- 22 iii. In the context of wage litigation because a substantial number of individual
23 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their
24 legal rights out of fear of retaliation by DEFENDANT, which may
25 adversely affect an individual's job with DEFENDANT or with a
26 subsequent employer, the Class Action is the only means to assert their
27 claims through a representative; and,
28

iv. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

58. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;

- 1 f. There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of the
3 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 4 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
5 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
6 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 7 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
8 ascertainable from the business records of DEFENDANT. The CALIFORNIA
9 LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who were
10 employed by DEFENDANT in California during the CALIFORNIA LABOR
11 SUB-CLASS PERIOD; and
- 12 i. Class treatment provides manageable judicial treatment calculated to bring an
13 efficient and rapid conclusion to all litigation of all wage and hour related claims
14 arising out of the conduct of DEFENDANT as to the members of the
15 CALIFORNIA LABOR SUB-CLASS.

16 **FIRST CAUSE OF ACTION**

17 **UNLAWFUL BUSINESS PRACTICES**

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

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

20 59. 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 60. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
24 Code § 17021.

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

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

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

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

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

27 65. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
28 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the

1 other members of the CALIFORNIA CLASS to be underpaid during their employment with
2 DEFENDANT.

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

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

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

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

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

26 71. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
27 and do, seek such relief as may be necessary to restore to them the money and property which
28 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the

1 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
2 business practices, including earned but unpaid wages for all time worked.

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

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

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

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

17 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all**
18 **Defendants)**

19 74. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
20 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
21 this Complaint.

22 75. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code
24 and the Industrial Welfare Commission requirements for DEFENDANT'S failure to accurately
25 calculate and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

26 76. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
27 policy, an employer must timely pay its employees for all hours worked.
28

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

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

6 79. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
7 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
8 of time they worked, and instead paying PLAINTIFF and other members of the CALIFORNIA
9 LABOR SUB-CLASS on a piece-rate per-visit basis. As set forth herein, DEFENDANT'S
10 uniform policy and practice was to unlawfully and intentionally deny timely payment of wages
11 due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

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

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

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

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

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

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

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

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

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

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME COMPENSATION**

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

7 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against all**
8 **Defendants)**

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

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

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

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

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

1 93. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
2 CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to work for
3 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

12 95. In committing these violations of the California Labor Code, DEFENDANT
13 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
14 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in
15 an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
16 California Labor Code, the Industrial Welfare Commission requirements and other applicable
17 laws and regulations.

18 96. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
19 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
20 receive full compensation for overtime worked.

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

1 98. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime
3 worked that they are entitled to, constituting a failure to pay all earned wages.

4 99. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
5 the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in
6 excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 &
7 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
8 CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed
9 to accurately record and pay as evidenced by DEFENDANT's business records and witnessed by
10 employees.

11 100. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
12 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
13 CLASS for all overtime worked by these employees, PLAINTIFF and the other members of the
14 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
15 injury in amounts which are presently unknown to them and which will be ascertained according
16 to proof at trial.

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

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

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

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

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**

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

19 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
20 **Defendants)**

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

24 105. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to provide all
25 the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR
26 SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of
27 the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did
28 not prevent these employees from being relieved of all of their duties for the legally required off-

1 duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other
2 CALIFORNIA LABOR SUB-CLASS Members were often not fully relieved of duty by
3 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
4 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal
5 breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records.
6 Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with
7 a second off-duty meal period in some workdays in which these employees were required by
8 DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other members of
9 the CALIFORNIA LABOR SUB-CLASS forfeited meal breaks without additional compensation
10 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

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

22 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
23 **Defendants)**

24 108. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
25 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
26 this Complaint.

27 109. From time to time, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
28 Members were required to work in excess of four (4) hours without being provided ten (10) minute

1 rest periods. Further, these employees were denied their first rest periods of at least ten (10)
2 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period
3 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a
4 first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
5 hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also
6 not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
7 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied
8 their proper rest periods by DEFENDANT and DEFENDANT's managers. In addition, because
9 of DEFENDANT's pay plan for PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
10 Members (being paid a flat rate only), DEFENDANT failed to compensate PLAINTIFF and
11 CALIFORNIA LABOR SUB- CLASS Members for their rest periods as required by the
12 applicable Wage Order and Labor Code. DEFENDANT did not have a policy or practice which
13 paid for off-duty rest periods to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS
14 Members when they were paid piece rate pay only. As a result, DEFENDANT's failure to provide
15 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with all the legally required
16 paid rest periods is evidenced by DEFENDANT's business records.

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

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

25
26 ///

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

3 **(Cal. Lab. Code § 226)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
5 **Defendants)**

6 112. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
7 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
8 this Complaint.

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

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

114. When DEFENDANT did not accurately record PLAINTIFF's and other CALIFORNIA LABOR SUB-CLASS Members' wages, and missed meal and rest breaks, and separately compensated rest periods, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that properly and accurately itemizes all wages, and missed meal and rest periods and reporting time wages owed to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby also failed to set forth the correct wages earned by the employees. Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*

115. 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 LABOR SUB-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 LABOR SUB-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 LABOR SUB-CLASS herein).

SEVENTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN DUE

(Cal. Lab. Code § 203)

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

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

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

As used in this article:

(d) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.

(e) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the to be paid for is performed personally by the person demanding payment.

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

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

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

120. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-CLASS Members' employment contract.

121. 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

1 the same rate until paid or until an action therefor is commenced; but the wages shall not
2 continue for more than 30 days.

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

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

13 **EIGHTH CAUSE OF ACTION**

14 **FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES**

15 **(Cal. Lab. Code §§ 2802)**

16 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
17 **Defendants)**

18 124. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
19 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
20 this Complaint.

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

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

27 126. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
28 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

1 members for required expenses incurred in the discharge of their job duties for DEFENDANT'S
2 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
3 CLASS members for expenses which included, but were not limited to, costs related to using their
4 personal cellular phones and personal vehicles all on behalf of and for the benefit of
5 DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were
6 required by DEFENDANT to use their personal cell phones and personal vehicles for work-
7 related business. DEFENDANT'S uniform policy, practice and procedure was to not reimburse
8 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from
9 using their personal cellular phones and personal vehicles for DEFENDANT within the course
10 and scope of their employment for DEFENDANT. These expenses were necessary to complete
11 their principal job duties. DEFENDANT are estopped by DEFENDANT'S conduct to assert any
12 waiver of this expectation. Although these expenses were necessary expenses incurred by
13 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to
14 indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members
15 for these expenses as an employer is required to do under the laws and regulations of California.

16 127. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
17 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
18 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at
19 the statutory rate and costs under Cal. Lab. Code § 2802.

20 **NINTH CAUSE OF ACTION**

21 **RETALIATION - Cal. Lab. Code §§ 98.6, 1102.5 and 6310**

22 **(Alleged by PLAINTIFF and against all DEFENDANTS)**

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

25 129. At all relevant times, California Labor Code section 98.6 was in effect and was
26 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any
27 employee, including PLAINTIFF, for raising complaints of illegality and/or belief that the
28 employee may disclose illegality regarding Labor Code violations.

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

131. PLAINTIFF raised complaints of illegality while he worked for DEFENDANT, and DEFENDANT retaliated against him by taking adverse employment actions including decreasing PLAINTIFF'S piece-rate rates and misplacing his voucher forms, which have directly decreased PLAINTIFF'S compensation for work performed for DEFENDANT.

132. As a proximate result of DEFENDANT's willful, knowing, and intentional violation(s) of Labor Code sections 98.6, 1102.5, PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to his damage in a sum according to proof.

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

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

TENTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§2698 et seq.)

(Alleged by PLAINTIFF against all Defendants)

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

136. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting

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

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

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

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

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

3 **PRAYER FOR RELIEF**

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

6 1. On behalf of the CALIFORNIA CLASS:

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

17 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 18 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
19 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class
20 action pursuant to Cal. Code of Civ. Proc. § 382;
21 b. Compensatory damages, according to proof at trial, including compensatory
22 damages for minimum wages, overtime compensation, unreimbursed expenses, and
23 separately owed rest periods, due to PLAINTIFF and the other members of the
24 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA
25 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;
26 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
27 the applicable IWC Wage Order;
28 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in

1 which a violation occurs and one hundred dollars (\$100) per each member of the
2 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
3 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
4 an award of costs for violation of Cal. Lab. Code § 226

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

8 3. On PLAINTIFF'S individual claims:

9 a. For all special damages which were sustained as a result of DEFENDANT's
10 conduct, including but not limited to, back pay, front pay, lost compensation and job
11 benefits that PLAINTIFF would have received but for the practices of
12 DEFENDANT;

13 b. For all exemplary damages, according to proof, which were sustained as a result of
14 DEFENDANT's conduct.

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

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

17 e. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

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

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

DATED: February 14, 2023

JCL LAW FIRM, APC

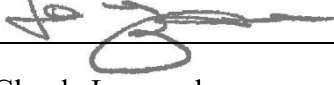
By: 
Jean-Claude Lapuyade
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: February 14, 2023

JCL LAW FIRM, APC

By:  _____

Jean-Claude Lapuyade
Attorney for PLAINTIFF

EXHIBIT 1



ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

Client # 56501

December 8, 2022

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

PACIFIC PRODUCTION PLUMBING

c/o C T Corporation System
28 Liberty Street
New York, NY 10005

Via Certified U.S. Mail with Return Receipt No. 7022 2410 0000 2184 0102

c/o C T Corporation System
Registered Agent
330 N. Brand Blvd., Suite 700
Glendale, CA 91203

Via Certified U.S. Mail with Return Receipt No. 7022 2410 0000 2184 0119

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 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 THOMAS E. WEATHERMON III (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant PACIFIC PRODUCTION PLUMBING (“Defendant”). Plaintiff has been employed by Defendant in California since August of 2018 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. Plaintiff also worked at times for Defendant as a piece-rate based employee entitled to be separately compensated for his non-productive time, including rest periods. 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, 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, exempt, and/or piece-rate based 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

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Pacific Production Plumbing
 c/o CT Corporation System
 Registered Agent
 330 N. Brand Blvd. Ste. 700
 Glendale, CA 91203



9590 9402 7738 2152 1898 03

2. Article Number (Transfer from service label)

7022 2410 0000 2184 0119

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

DEC 13 2022

12/13/2022 Delivery Services 882-3971

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

all Restricted Delivery

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

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Pacific Production Blumbing
c/o CT corporation System
26 Liberty Street
New York, NY 10005



9590 9402 7738 2152 1897 97

2. Article Number (Transfer from service label)

7022 2410 0000 2184 0102

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

DEC 14 2022

CB

12/8/22 Weathermen 002-397

3. Service Type

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

Mail
Mail Restricted Delivery
(300)