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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ISAIAH DAVIS, CHARLES HARRELL,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

RPM JUICE, INC., a California Corporation;
RPM FOODS, INC., a California Corporation;
and DOES 1-50, Inclusive.

Defendants.

Case No. 21STCV14755

**DECLARATION OF SHANI O. ZAKAY
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Hearing Date: June 23, 2023
Hearing Time: 10:00 a.m.
Department: 7

Trial Date: None
Action Filed: April 19, 2021

1 I, SHANI O. ZAKAY, declare as follows:

2 1. I am the managing partner of the law firm of Zakay Law Group, APC, lead counsel
3 of record for Plaintiffs ISIAAH DAVIS and CHARLES HARRELL (“Plaintiffs”) in this matter.
4 As such, I am fully familiar with the facts, pleadings and history of the matter. The following facts
5 are within my own personal knowledge, and if called as a witness, I could testify competently to
6 the matters stated herein.

7 2. This declaration is being submitted in support of the motion by Plaintiffs for an
8 order: (1) preliminarily approving the proposed settlement of this putative class and Private
9 Attorneys General Act (“PAGA”) action with Defendants RPM JUICE, INC., and RPM FOODS,
10 INC. (“Defendants”); (2) approving the form and method for providing class-wide notice; (3)
11 directing that notice of the proposed settlement be given to the class; and (4) scheduling a final
12 approval hearing date to consider Plaintiffs’ motion for final approval of the settlement and entry
13 of the Judgment, and Plaintiffs’ motion for approval of attorneys’ fees and litigation expenses.
14 Attached hereto as **Exhibit #1** is a copy of the fully executed Class Action and PAGA Settlement
15 Agreement and Class Notice (“Agreement”) along with exhibits thereto. This Declaration
16 incorporates by reference the definitions in the Agreement, and all terms defined therein shall have
17 the same meaning as set forth in the Agreement.

18 **Fairness of Settlement**

19 3. As consideration for this Settlement, the total amount to be paid by Defendants is
20 One Million Seven Hundred Thousand Dollars (\$646,325.00) (the “Gross Settlement Amount”).
21 The Gross Settlement amount will settle all issues pending in this litigation between the Plaintiffs
22 and the Class, on the one hand, and the Defendants, on the other hand, including: payment of all
23 Individual Settlement Payments to Settlement Class Members, the Class Representative Service
24 Payments, Attorneys’ Fees and Attorney’s Expenses, the payment to the California Labor
25 Workforce Development Agency and Individual PAGA Payments, and the expenses of the
26 Settlement Administrator. The Gross Settlement Amount does not include Defendants’ share of
27 employer payroll taxes. The Settlement is all-in with no reversion to Defendants and no need to
28 submit a claim form.

1 4. The relief provided in the Settlement will benefit all Class Members who do not opt
2 out. The Settlement does not improperly grant preferential treatment to the Plaintiffs or segments
3 of the Class in any way. Each Class Member will be entitled to a cash payment based on the plan
4 of allocation described herein. Each Participating Class Member's Individual Settlement Payment
5 will be determined based upon the weeks worked by that employee during the prescribed Class
6 Period.

7 5. This Settlement is the result of extensive and hard-fought litigation and negotiations
8 before an experienced and well-respected mediator. Defendants denied and continue to deny any
9 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class
10 Counsel have determined that it is desirable and beneficial to the Class Members to put to rest the
11 Released Class Claims and Released PAGA Claims. The Released Class Claims include all claims
12 that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative
13 Complaint that occurred during the Class Period. The Released PAGA Claims include all claims for
14 PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in
15 the Operative Complaint and the PAGA Notices sent by Plaintiffs, that occurred during the PAGA
16 Period.

17 6. Defendants' total exposure for the alleged violations at the time this Settlement was
18 negotiated was calculated by BCG, Plaintiffs' damage expert. Plaintiffs used BCG to analyze the
19 data and determine the potential damages for the Class Members. For the Class, Plaintiffs estimate
20 that Defendants were subject to maximum liability for damages in the amount of \$3,466,532
21 consisting of \$286,846 for unpaid wages due to off-the-clock work, \$1,109,828 for rest period
22 violations, \$1,116,976 for meal period violations, and \$952,882 for unreimbursed expenses.
23 Plaintiffs contend that Defendants required themselves and Class Members to perform work-related
24 activities pre and post shift, including performing tasks such as disarming/arming alarms, turning
25 machinery on/off and preparing/cleaning food items for the day. Plaintiffs further contend that
26 Defendants required Plaintiffs and Class Members to receive and respond to work-related
27 communications off the clock, including but not limited to answering questions about product
28 supply and shift coverage. Plaintiffs also allege that Defendants did not provide compliant rest

1 periods for themselves or other Class Members, as evidenced by the sample of Class Member time
2 and pay records provided, Class Members recorded rest breaks. Similarly, Plaintiffs contend that
3 Defendants failed to provide compliant meal periods, which is also evidenced in the sampled Class
4 Member time and pay records. Plaintiffs' further allege that they and other Class Members were
5 not reimbursed for the required use of their personal cell phones to receive and respond to work-
6 related communications with supervisors and co-workers regarding product supply and shift
7 coverage, and the occasional use of personal vehicles to perform work-related tasks including
8 making bank deposits, transporting product between stores, and driving to off-site events. As it
9 pertains to derivative penalties, Plaintiffs' expert calculated \$2,224,288 in waiting time penalties
10 and \$1,637,100 for wage statement penalties. Finally, Plaintiffs' expert calculated that Defendants
11 could be liable for PAGA penalties in an amount of \$2,974,675. Consequently, the Settlement of
12 \$646,325.00 represents approximately 18.6% of the maximum estimated *damages*. Given the
13 amount of the Settlement as compared to the potential value of claims in this case, the Settlement
14 is fair and reasonable. Clearly, the goal of this litigation – to provide compensation to Class
15 Members for unpaid time and for allegedly missed meal and rest breaks – has been met.

16 **Procedural History of the Litigation**

17 7. On February 2, 2021, Plaintiff Davis filed a Notice of Violations with the LWDA
18 and served the same on Defendants. A true and correct copy of Plaintiff Davis' Notice letter to the
19 LWDA is attached hereto as **Exhibit #2**. On April 19, 2021, Plaintiff Davis filed the class action
20 and PAGA complaint in this Court, asserting claims for: (1) unfair competition; (2) failure to pay
21 minimum wages; (3) failure to pay overtime wages; (4) failure to provide required meal breaks; (5)
22 failure to provide required rest breaks; (6) failure to reimburse employees for required expenses;
23 (7) failure to provide accurate itemized wage statements; (8) failure to provide wages when due; (9)
24 Unpaid sick pay and failure to provide paid sick leave balance; and (10) violation of the Private
25 Attorneys General Act. On April 23, 2021, Plaintiff Harrell filed a Notice of Violations with the
26 LWDA and served the same on Defendants. A true and correct copy of Plaintiff Harrell's Notice
27 letter to the LWDA is attached hereto as **Exhibit #3**. On September 20, 2021, Plaintiff Davis filed
28 a First Amended Complaint that added Plaintiff Harrell as a plaintiff in this Action. The First

1 Amended Complaint also added a cause of action for failure to provide personnel files in violation
2 of California Labor Code Section 1198.5.

3 8. Plaintiffs seek to represent a putative class of all non-exempt employees who are or
4 previously were employed by RPM Juice, Inc. and/or RPM Foods Inc., who performed work in
5 California during the period of April 19, 2017 through the December 15, 2022 (the "Class Period").
6 The Complaint generally alleges the causes of action listed above. The Action seeks unpaid wages,
7 statutory and PAGA penalties, attorneys' fees, and litigation costs. Plaintiffs also seek to represent
8 a PAGA group of Aggrieved Employees which is comprised of all non-exempt employees who are
9 or previously were employed by RPM Juice, Inc. and/or RPM Foods Inc., who performed work in
10 California during the period of February 8, 2020 through December 15, 2022 (the "PAGA Period").

11 9. Prior to mediation, the Parties agreed to informally exchange documents and
12 information in connection with the Action. As part of this process, Defendants provided time and
13 pay records for 298 employees, approximately 22.6% of the total Class. Plaintiffs' statistician found
14 this to be sufficient to develop a meaningful damages model. Additionally, the 22.6% sample is
15 statistically reliable, resulting in a confidence level of 95% with a margin of error of 5%. In addition
16 to the time and payroll records, Defendants produced multiple iterations of Defendants' Employee
17 Handbook, as well as other relevant policies and agreements.

18 10. On December 15, 2022, the Parties participated in an all-day mediation presided over
19 by Steven Rottman, Esq., a mediator of wage and hour class actions. Defendants raised an inability
20 to pay defense at the Parties' mediation, and the Parties agreed to a settlement of \$646,325
21 contingent upon a forensic accountant's review of Defendants' financial records to advise on
22 Defendants' ability to fund a larger settlement. Plaintiffs subsequently retained Creal & Creal, an
23 accountancy corporation that regularly performs litigation support and forensic accounting services,
24 including providing opinions related to solvency. Defendants sent Kenneth Creal, CPA, of Creal
25 & Creal a number of financial documents including tax returns from recent years, balance sheets,
26 and profit and loss summaries. Kenneth Creal also performed an investigation into the assets owned
27 by Defendants and their owners. Following his review, Kenneth Creal advised Plaintiffs via a
28 written opinion that in his professional opinion, the conditional settlement of approximately

1 \$650,000 negotiated between the Parties facilitated by mediator Rottman was reasonable in light of
2 Defendants' financial condition. Following Plaintiffs' consultation with Creal & Creal, the Parties
3 reached a settlement based on Mr. Rottman's recommended settlement amount, and executed a
4 binding Memorandum of Understanding. Thereafter, the Parties documented the agreement in the
5 form of a Settlement Agreement, which was signed by the Parties and is now presented to this Court
6 for preliminary approval.

7 11. Although a resolution has been reached, Defendants deny that they have violated
8 any applicable law, committed any wrong against Plaintiffs or any other current or former
9 employee, or that they have otherwise damaged Plaintiffs or any other current or former employee
10 in any way. Further, Defendants contend that class certification would be inappropriate for any
11 reason other than for settlement. Plaintiffs contend that Defendants violated California wage and
12 hour laws. Plaintiffs further contend that the Action is appropriate for class certification on the basis
13 that the Plaintiffs' claims meet the requisites for class certification. Without admitting that class
14 certification is proper, Defendants have stipulated that the above Class may be certified for
15 settlement purposes only. The Parties agree that certification for settlement purposes is not an
16 admission that class certification would be proper if the class certification issues were litigated.
17 Further, the Agreement is not admissible in this or any other proceeding as evidence that the Class
18 could be certified absent a settlement. Solely for purposes of settling the Action, the Parties stipulate
19 and agree that the requisites for establishing class certification with respect to the Class, as defined
20 above, are satisfied.

21 12. Class Counsel has conducted a thorough investigation into the facts of the action.
22 Class Counsel has diligently evaluated the Class Members' claims against Defendants. Prior to the
23 mediation, counsel for Defendants provided Class Counsel with access to the necessary data and
24 information as noted above to evaluate the claims by the Class. Class Counsel reviewed the
25 production of documents from the Defendants and conducted an extensive review of a significant
26 sample of time records and data with the assistance of an expert, Berger Consulting Group
27 ("BCG"). Based on the foregoing and their own independent investigation, evaluation and
28 experience, Class Counsel believe that the Settlement is fair, reasonable, and adequate and is in the

1 best interest of the Class in light of all known facts and circumstances, including the risk of
2 significant delay, defenses asserted by Defendants, and potential appellate issues.

3 **Settlement Terms and Plan of Allocation**

4 13. The Gross Settlement Amount to be paid by Defendants is Six Hundred Forty Six
5 Thousand Three Hundred Twenty-Five Dollars and Zero Cents (\$646,325.00). The Gross
6 Settlement Amount consists of the following elements: (1) the Individual Class Payments to
7 Participating Class Members, (2) Individual PAGA Payments, (3) the LWDA PAGA Payment, (4)
8 Class Counsel Fees, (5) Class Counsel Expenses, (6) Class Representative Service Payments, and
9 (7) Administrator's Fees.). The Gross Settlement Amount does not include Defendants' share of
10 employer payroll taxes, which Defendants shall pay to the Administrator separately. The Gross
11 Settlement Amount shall be all-in with no reversion to Defendants. *See* Agreement at ¶¶ 1.22, 3.1.

12 14. After Final Approval and the Judgment becomes final (the "Effective Date," as
13 defined in the Agreement), Defendants will fund the Gross Settlement Amount in four equal
14 installments of \$161,581.25 paid per installment. Defendants shall pay the first installment six (6)
15 months after the Court grants final approval of the Settlement. Defendants shall pay the second
16 installment within one (1) year after the first payment is made. Defendants shall pay the third
17 installment within two (2) years after the first payment is made. Defendants shall pay the fourth
18 and final installment within three (3) years after the first payment is made. Within 14 days after
19 Defendants fund the Gross Settlement Amount in an amount sufficient to cover the Individual Class
20 Payments, Individual PAGA Payments, and the Class Representative Service Payments, the
21 Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments,
22 and the Class Representative Service Payments. Thereafter, within 14 days after Defendants fund
23 the Gross Settlement Amount in full, the Administrator will mail checks for the LWDA PAGA
24 Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, and the Class
25 Counsel Litigation Expenses Payment. Disbursement of the Class Counsel Fees Payment, the Class
26 Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not
27 precede disbursement of Individual Class Payments and Individual PAGA Payments. *See*
28 Agreement at ¶¶ 1.18; 4.3- 4.4.

1 15. The Net Settlement Amount shall equal the amount available for Individual Class
2 Payments after deducting the Court-approved amounts for the Individual PAGA Payments, the
3 LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment,
4 Class Counsel Litigation Expenses Payment and the Administration Expenses Payment. The
5 submission of a claim form is not required for a Participating Class Member to be paid an Individual
6 Class Payment. *See Agreement at ¶¶ 1.28; 3.1.*

7 16. The Individual Class Payment will be calculated by dividing the Net Settlement
8 Amount by the total number of workweeks worked by all Participating Class Members during the
9 Class Period and then multiplying that amount by the total number of workweeks worked by each
10 Participating Class Member during the Class Period. *See Agreement at ¶ 4.1.*

11 17. Class Members will have forty-five (45) days after the mailing of the Class Notice
12 to exclude themselves or submit written objections. The deadlines will be extended an additional
13 fourteen (14) calendar days for Class Members whose notice is re-mailed. All Class Members who
14 do not “opt out” will be deemed Participating Class Members and will be bound by the Settlement.
15 The Notice will advise the Class Members of their right to object to the Settlement. *See Agreement*
16 *at ¶¶ 1.43; 7.5.1.*

17 18. If a check is returned to the Settlement Administrator, the Settlement Administrator
18 will make all reasonable efforts to obtain a correct address for the Settlement Class Member and re-
19 mail the check to the Settlement Class Member at his or her correct address. If a Settlement Class
20 Member’s Individual Settlement Payment check is not cashed within 180 days after the Settlement
21 Administrator’s last mailing to the Settlement Class Member, the Administrator shall transmit the
22 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
23 name of the Class Member. *See Agreement at ¶¶ 4.4.1; 4.4.2.*

24 19. The Parties have agreed to use ILYM Group as the Settlement Administrator.
25 Payment of the expenses of the Settlement Administrator from the Gross Settlement Amount shall
26 be made for the expenses of effectuating and administering the Settlement. *See Agreement at ¶¶*
27 *1.2; 7.1.* The Settlement Administrator shall receive payment for services estimated at
28 approximately \$14,000. *See Declaration of ILYM Group, filed concurrently.*

20. Subject to Court approval, the Agreement provides for Attorneys' Fees not to exceed 1/3 of the Gross Settlement Amount and Attorneys' Expenses in an amount not to exceed \$20,000. In support of this request, Class Counsel will provide evidentiary support, including lodestar method calculations. *See* Agreement at ¶ 3.2.2. Subject to Court approval, the Agreement provides for payment of a Class Representative Service Award of no more than \$20,000 (\$10,000 each for both Plaintiffs), or such lesser amount as may be approved by the Court at Final Approval. *See* Agreement at ¶ 3.2.1.

21. Subject to Court approval, \$36,000 will be paid for settlement of civil penalties under PAGA, Labor Code Section 2698 *et seq.* Pursuant to the requirements of Labor Code §2699(i), the PAGA Settlement shall be allocated \$27,000.00 (75%) to the LWDA (the "LWDA PAGA Payment") as the LWDA's share of the settlement of civil penalties and \$9,000.00 (25%) for distribution as Individual PAGA Payments to the Aggrieved Employees. The Administrator will calculate each Individual PAGA Payment by dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and multiplying the result by the total number of pay periods each Aggrieved Employee worked within the PAGA Period. *See* Agreement at ¶ 3.2.5; 3.2.5.1.

Risks of Continued Litigation and Standards for Approval

22. Plaintiffs and Class Counsel recognize the expense and time involved in continuing to litigate and ultimately trying the Action against Defendants through possible appeals which could take several years. Class Counsel have also taken into account the uncertain outcome and risk of litigation, especially in complex actions such as the one here. Class Counsel are also mindful of, and recognize, the inherent problems of proof under, and asserted defenses to, the claims asserted in the Action. Based upon their evaluation, Plaintiffs and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class Members.

23. A number of defenses asserted by Defendants presented serious threats to the claims of the Plaintiffs and the other Class Members. For instance, Defendants asserted that the employment practices complied with all applicable Labor Laws. Specifically, Defendants argued

1 that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012) weakened,
2 if not eliminated, Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest
3 period claims. A major component of the damages alleged to have been suffered by the Class
4 Members are attributed to non-compliant meal and rest breaks. Before and during the mediation,
5 Defendants aggressively argued that Defendants' policies and culture afforded the Class Members
6 an opportunity to take timely meal and rest breaks, and that to the extent that breaks were not taken,
7 this was done at the election of the employee, particularly in instances in which an employee worked
8 a shift of 6 hours or less. Defendants argued, therefore, that under the *Brinker* decision they have
9 no liability for the missed breaks whatsoever. Defendants argued that they adopted and strictly
10 enforced lawful policies, and afforded Plaintiffs and the Class Members compliant meal and rest
11 breaks.

12 24. If successful, these defenses could eliminate or substantially reduce any recovery to
13 the Class. While Plaintiffs believes that these defenses, and others, could be overcome, Defendants
14 maintain these defenses have merit and therefore present a serious risk to recovery for the Class.

15 25. There was also a significant risk that, if the Action was not settled, Plaintiffs would
16 be unable to obtain class certification and thereby not recover on behalf of any employee other than
17 himself. Defendants argued that the individual experience of each employee varied with respect to
18 the alleged claims. While other cases have approved class certification of wage and hour claims,
19 class certification in this action would have been hotly disputed and was by no means a foregone
20 conclusion. Finally, even if class certification was successful, as demonstrated by the California
21 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
22 significant hurdles to overcome for a class-wide recovery even where the class has been certified.

23 26. Plaintiffs' expert calculated that Defendants could be liable for PAGA penalties in
24 an amount of \$2,974,675. However, Courts have considerable discretion to reduce the penalty
25 award. Some trial courts have awarded no civil penalties, even when Labor Code violations are
26 established. See *In re Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming an award
27 of \$0 in PAGA penalties in a wage and hour class action). To recover any PAGA penalties, Plaintiffs
28 would be required at trial to prove each of the underlying Labor Code violations. See *Cardenas*

1 *v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) Here, Plaintiffs
2 would need to prove that each Aggrieved Employee suffered a violation for each pay period the
3 employee worked. Again, Defendants raised several defenses that present serious threats to the
4 claims of the Plaintiffs and the Aggrieved Employees. In all, Plaintiffs' PAGA liability exposure is
5 hotly contested. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of
6 PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial
7 court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith
8 attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such
9 reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after the plaintiff prevailed
10 at trial, and even then, the PAGA penalties were reduced by 90%.

11 27. Plaintiffs will apply to the Court for Class Representative Service Awards in
12 consideration of their service, and for the risks undertaken on behalf of the Class. Plaintiffs
13 performed their duties admirably by working with Class Counsel. *See* Agreement at ¶ 3.2.1. The
14 requested Plaintiffs' Service Awards of \$10,000 per Plaintiff is within the accepted range of awards
15 for purposes of preliminary approval. Plaintiffs have not negotiated individual settlement payments
16 with Defendants.

17 28. The stage of the proceedings at which this Settlement was reached also militates in
18 favor of preliminary approval and ultimately, final approval of the Settlement. Class Counsel has
19 conducted a thorough investigation into the facts of the class action. Class Counsel began
20 investigating the Class Members' claims before this Action was filed. Prior to the mediation, Class
21 Counsel performed significant review and analysis of Defendants' documents, time records and pay
22 records. Class Counsel engaged in a thorough research and analysis of the relevant claims and data.

23 29. Class Counsel are also experienced with the claims at issue here, as Class Counsel
24 previously litigated and settled similar claims in numerous other actions. Attorneys from both Class
25 Counsel's firms have extensive class litigation experience, handling a number of class action and
26 complex commercial cases and have acted both as counsel and as lead and co-lead counsel in a
27 variety of these matters. Class Counsel have successfully prosecuted and obtained significant
28 recoveries in numerous class action lawsuits and other lawsuits involving complex issues of law

1 and fact. Class Counsel have been involved as class counsel in over two hundred class action
2 matters, including many wage and hour class actions. Class Counsel has been found to be adequate
3 counsel by the courts throughout California. A true and correct copy of the Zakay Law Group,
4 APC's firm resume is attached hereto as **Exhibit #4**. Class Counsel have been approved as
5 experienced class counsel in both state and federal courts in California in contested class
6 certification proceedings. Thus, the adequacy requirement is satisfied. The Settlement did not occur
7 until Class Counsel possessed sufficient information to make an informed judgment regarding the
8 likelihood of success on the merits and results that could be obtained through further litigation.

9 **Class Certification Issues**

10 30. Plaintiffs contend that the proposed Settlement meets all the requirements for class
11 certification under the California Code of Civil Procedure section 382 as demonstrated below, and
12 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
13 should conditionally certify the Class for settlement purposes only, defined as follows: all non-
14 exempt employees who are or previously were employed by either Defendant who performed work
15 in California at any time during the Class Period of April 19, 2017 through December 15, 2022. *See*
16 Agreement at ¶ 1.5. Defendants estimate the number of work weeks during the Class Period to be
17 approximately 41,454.

18 31. Here, the approximately 1,319 current and former employees that comprise the Class
19 are sufficiently numerous for class certification. (*See Bowles v. Superior Court*, 44 Cal.2d 574
20 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d
21 926, 934 (1981) (class of 48 members satisfies numerosity requirement)). All of these employees
22 are ascertainable because the Class Members can readily be determined through examination of
23 Defendants' employment files.

24 32. Plaintiffs contend that common questions of law and fact are present. Specifically:
25 (i) whether Defendants failed to pay Class Members for all hours worked; (ii) whether Defendants
26 failed to provide meal and rest periods to Class Members; (iii) whether Defendants failed to timely
27 furnish accurate, itemized and legal wage statements; and (iv) whether Defendants are liable for
28 attorneys' fees and costs.

1 33. Plaintiffs contend that the typicality requirement is fully satisfied. Plaintiffs, like
2 every other member of the Class was employed by Defendants and are members of the Class.
3 Plaintiffs were subject to the same practices affecting all other Class Members concerning non-
4 compliant meal and rest periods and Defendants' failure to pay meal or rest period premiums,
5 unpaid wages as a result of off-the-clock work, unreimbursed business expenses, and received
6 similar wage statements. Plaintiffs' claims and the Class Members' claims arise from the same
7 course of conduct by Defendants, involve the same policies, are based on the same legal theories,
8 and are subject to the same defenses. Plaintiffs did not separately negotiate individual settlements
9 with Defendants.

10 34. The Class Members are adequately represented because Plaintiffs and Class Counsel
11 (a) do not have any conflicts of interest with other Class Members, and (b) will prosecute the case
12 vigorously on behalf of the class. (*See Hanlon*, 150 F.3d at 1020.) Plaintiffs have been and continue
13 to be aware of their duties as the representative of the class and has actively participated in the
14 prosecution of the case to date, with the Class Members' interests as a priority. Plaintiffs understood
15 at the time they filed that as a class representatives, they owed a duty to the putative Class Members
16 to faithfully prosecute this Action with their best interests at the forefront of every decision. First,
17 Plaintiffs effectively communicated with Class Counsel, provided documents to them and
18 participated in the investigation and negotiations in the Action. Second, Plaintiffs retained
19 competent counsel who are experienced in employment class actions. Third, there is no antagonism
20 between the interests of the Plaintiffs and those of the Class. Both the Plaintiffs and the Class
21 Members seek monetary relief under the same set of facts and legal theories.

22 **Additional Issues**

23 35. The Notice Packet, drafted jointly and agreed upon by the Parties through their
24 respective counsel and to be approved by the Court, includes all relevant information. (*See Exhibit*
25 *A* to the Agreement.) The Notice Packet will state that the Class Members shall have forty-five (45)
26 days from the date that the Notice Packet is mailed to them to request exclusion or to submit an
27 objection. The Class Members will be given an opportunity to object to the terms of the Agreement
28 and/or the request for attorneys' fees and costs and to participate at the final approval hearing, in

1 accordance with the instructions set forth in the Notice Packet. Class Members will be instructed to
2 only contact the Settlement Administrator and/or Class Counsel and not the Court. Class Members
3 who do not opt out will automatically receive an Individual Settlement Payment. This notice
4 program was designed to meaningfully reach the Class Members and advises them of all pertinent
5 information concerning the Settlement. The mailing and distribution of the Notice Packet satisfies
6 the requirements of due process, is the best notice practicable under the circumstances, and
7 constitutes due and sufficient notice to all persons entitled thereto. The Notice Packet provides
8 information on the terms and provisions of the Settlement; the benefits that the Settlement provides
9 for Class Members; the date, time, and place of the final settlement approval hearing; and the
10 procedure and deadline for submitting comments, objections, and requests for exclusion. The Notice
11 Packet complies with Rules of Court 3.766 and 3.769(f).

12 36. Attached hereto as **Exhibit #5** is a true and correct copy of April 20, 2023, proof of
13 filing the proposed Settlement and this motion with the LWDA.

14 I declare under penalty of perjury under the laws of the State of California that the foregoing
15 is true and correct. Executed this 20th day of April 2023, at San Diego, California.

16 By:  _____
17

18 Shani O. Zakay
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EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Isaiah Davis and Charles Harrell (“Plaintiffs”) and defendants RPM Juice, Inc. and RPM Foods Inc. (“Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiffs’ lawsuit alleging wage and hour violations against Defendants captioned *Isaiah Davis et al. v. RPM Juice, Inc. et al.* initiated on April 19, 2021 and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means ILYM Group, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employees” mean all non-exempt employees who are or previously were employed by RPM Juice, Inc. and/or RPM Foods Inc. (“Defendants”), who performed work in California during the period of February 8, 2020 through December 15, 2022 (the “PAGA Period”).
- 1.5. “Class” means all non-exempt employees who are or previously were employed by RPM Juice, Inc. and/or RPM Foods Inc. (“Defendants”), who performed work in California during the period of April 19, 2017 through the December 15, 2022 (the “Class Period”).
- 1.6. “Class Counsel” means JCL Law Firm, APC and Zakay Law Group, APLC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action. Class Counsel Fees Payment shall be divided equally between Class Counsel: 50% to JCL Law Firm, APC and 50% to Zakay Law Group, APLC.
- 1.8. “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, , and number of Class Period Workweeks and PAGA Pay Periods.

- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English (with a Spanish translation if applicable) in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from April 19, 2017 through the December 15, 2022.
- 1.13. “Class Representatives” means the named Plaintiffs in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payments” means the payment to the Class Representatives for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Los Angeles.
- 1.16. “Defendants” means named Defendants RPM Juice, Inc. and RPM Foods Inc.
- 1.17. “Defense Counsel” means Webster Kaplan, LLP.
- 1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. “Gross Settlement Amount” means \$646,325.00 which is the total amount Defendants agree to pay under the Settlement except for Defendants’ employer-side payroll taxes and except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period from April 19, 2017 through the December 15, 2022.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. “PAGA Notice” means Plaintiffs’ February 8, 2021 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

- 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$9,000.00) and the 75% to LWDA (\$27,000.00) in settlement of PAGA claims.
- 1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. “Plaintiffs” mean Isaiah Davis and Charles Harrell, the named plaintiffs in the Action.
- 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.38. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. “Released Class Claims” means the claims being released as described in Paragraph 6.2 below.
- 1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 6.2 below.
- 1.41. “Released Parties” means: Defendants and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, partners, joint venturers, and affiliates.
- 1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. “Response Deadline” means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. “Workweek” means any week during which a Class Member worked for Defendants for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On April 19, 2021, Plaintiff Isaiah Davis commenced this Action by filing a Complaint against Defendants. On September 20, 2021, Plaintiffs filed a First Amended

Complaint alleging causes of action against Defendants 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 Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Order; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code §2802; (7) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code §§ 226 and 226.2; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202, and 203; (9) Unpaid Sick Pay and Failure to Provide Paid Sick Leave Balance in Violation of Cal. Lab. Code §§246 et seq.; (10) Violation of the Private Attorneys General Act [Labor Code §§2698 *et seq.*]; and (11) Failure to Provide Personnel Files in Violation of Cal. Lab. Code §1198.5. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”). Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.

2.3. On December 15, 2022, the Parties participated in an all-day mediation presided over by Steven Rottman, Esq. which led to this Agreement to settle the Action.

2.4. Prior to mediation negotiating the Settlement, Plaintiff obtained, through informal discovery documents and data necessary to mediate the Action, including the Class demographics, all relevant employment policies in effect during the Class Period, and a sample of time and payroll records. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.5. The Court has not granted class certification.

2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendants promise to pay \$646,325.00 and no more as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to

submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiffs: Class Representative Service Payments to the Class Representatives of not more than \$10,000 each (in addition to any Individual Class Payments and any Individual PAGA Payments the Class Representatives are entitled to receive as a Participating Class Member and/or Aggrieved Employees. Defendants will not oppose Plaintiffs' request for Class Representative Service Payments that do not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves Class Representative Service Payments in amounts less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 1/3 of the Gross Settlement Amount, which is currently estimated to be \$215,441.66 and a Class Counsel Litigation Expenses Payment of not more than \$20,000. Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and hold Defendants harmless, and indemnify Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$_____ except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$_____, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 25% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 75% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$36,000 to be paid from the Gross Settlement Amount, with 75% (\$27,000) allocated to the LWDA PAGA Payment and 25% (\$9,000) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$_ by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. At mediation, it was assumed that there were 1,370 Class Members who worked approximately 64,374 Workweeks. However, based on a review of its records to date, Defendants estimate there are 1,319 Class Members who collectively worked a total of 41,454 Workweeks, and 1,012 Aggrieved Employees who worked a total of 16,619 PAGA Pay Periods.

- 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator as follows: The Gross Settlement Amount shall be paid via four equal installments (\$161,581.25 each), with the first installment due 6 months after the Court grants final approval of the Settlement, the second installment due one year after the first payment is made, the third installment due two years after the first payment is made, and the fourth and final installment due three years after the first payment is made.
- 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendants fund the Gross Settlement Amount in an amount sufficient to cover the Individual Class Payments, Individual PAGA Payments, and the Class Representative Service Payments, the Administrator will mail checks for all Individual Class Payments and all Individual PAGA Payments, and the Class Representative Service Payments. Thereafter, within 14 days after Defendants fund the Gross Settlement Amount in full, the Administrator will mail checks for the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a

single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Defendants fully fund the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1 Plaintiffs' Release. Plaintiffs and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2, below. ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now knows or believes to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint that occurred during the Class Period. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice that occurred during the PAGA Period.

6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

6.1 Defendants' Declaration in Support of Preliminary Approval. Within 3 days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel a signed Declaration from Defendants and/or Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Defendants shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice consistent with Exhibit A; (iv) a signed

declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their Declarations, Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval as soon as possible after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.

6.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court’s concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected ILYM Group to serve as the Administrator and verified that, as a condition of appointment, ILYM Group agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 7.4 Notice to Class Members.
- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice (with Spanish translation, if necessary) substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 7.4.3 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later

than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the

challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1 Website and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor a toll-free telephone number to receive Class Member calls and faxes.

7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of

Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

- 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration in Court.
- 7.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **CLAW BACK CLAUSE** At mediation, it was assumed that there were 1,370 Class Members who worked approximately 64,374 Workweeks. However, a subsequent review of records the Parties now estimate that there are 1,319 Class Members who collectively worked a total of 41,454 Workweeks during the Class Period. One week prior to the deadline for filing of the motion for preliminary approval of the settlement, Defendants will provide a declaration under penalty of perjury confirming the number of applicable Class Members and workweeks they worked during the applicable Class Period. If the workweek number increases by more than 5% of the estimate stated herein, the Class Period's end date and PAGA Period's end date will change to the date on which the number of workweeks reached 105% of 64,374 (67,593).
9. **DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendants may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
10. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
- 10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants reserve the right to contest certification of any class for any reasons, and Defendants reserve all available

defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2 Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency.

Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and

supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement

the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants make a written request to Class Counsel for the return, rather than the destructions, of Class Data.

12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

12.16 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

JCL Law Firm, APC
Jean-Claude Lapuyade, Esq.
Sydney Castillo Johnson, Esq.
Monnett De La Torre, Esq.
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
T: 619-599-8292
F: 619-599-8291
jlapuyade@jcl-lawfirm.com

To Defendants:

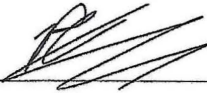
Webster Kaplan, LLP
Andrew B. Kaplan, Esq.
Michelle Cuenca Terry, Esq.
16830 Ventura Blvd., Suite 130
Encino, CA 91436
T: 310-282-9494
F: 310-282-9499
akaplan@wksllp.com
mterry@wksllp.com

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.


Isaiah Davis (Apr 5, 2023 11:17 CDT)

Plaintiff Isaiah David

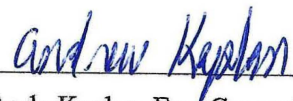

For Defendant RPM Juice, Inc.


Charles Harrell (Apr 5, 2023 08:33 PDT)

Plaintiff Charles Harrell


For Defendant RPM Foods, Inc.


Shani O. Zakay, Esq. Counsel For Plaintiffs


Andy Kaplan, Esq. Counsel For Defendants


Jean-Claude Lapuyade, Esq. Counsel For Plaintiffs

EXHIBIT A

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING
DATE FOR FINAL COURT APPROVAL**

Isaiah Davis et al. v. RPM Juice, Inc. et al. (Case No. 21STCV14755)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against RPM Juice, Inc. and RPM Foods Inc. (abbreviate name; “Defendants” is used herein as a placeholder) for alleged wage and hour violations. The Action was filed by former Defendants employee Isaiah Davis and Charles Harrell (“Plaintiffs”) and seeks payment of (1) back wages, meal and rest premiums, unreimbursed expenses, penalties and interest for a class of All non-exempt employees who are or previously were employed by Defendants, who performed work in California during the period of April 19, 2017 through the December 15, 2022 (the “Class Period”) (“Class Members”); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all non-exempt employees who are or previously were employed by RPM Juice, Inc. and/or RPM Foods Inc. (“Defendants”), who performed work in California during the period of February 8, 2020 through December 15, 2022 (the “PAGA Period”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendants’ records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement <u>Written Objections Must be Submitted by</u>	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.

You Can Participate in the _____ Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendants' records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former employees of Defendants. The Action accuses Defendants of violating California labor laws by failing to pay overtime wages, minimum wages, wages due upon termination and reimbursable expenses and failing to provide meal periods, rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA") and for damages under Business & Professions Code §§17200 et seq. Plaintiffs are represented by attorneys in the Action: The JCL Law Firm, APC and Zakay Law Group, APLC ("Class Counsel.")

Defendants strongly deny violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiffs are correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendants have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendants Will Pay \$646,325.00 as the Gross Settlement Amount (Gross Settlement). XYZ has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, XYZ will fund the Gross Settlement not more than [14] days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$ _____ (1/3 of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$20,000 as a Class Representative Awards for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Class Payments and any Individual PAGA Payments.
 - C. Up to \$ _____ to the Administrator for services administering the Settlement.
 - D. Up to \$36,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross

Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendants are asking the Court to approve an allocation of 25% of each Individual Class Payment to taxable wages (“Wage Portion”) and 75% to interest and penalties (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes they owe on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.
6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendants.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendants based on the facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.
8. Administrator. The Court has appointed a neutral company, ILYM Group (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re- mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Defendants have fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the facts as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all class claims alleged in the operative complaint, or which could have been alleged in the operative complaint based on the facts alleged, which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and class claims outside of the Class Period.

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and Defendants have paid the Gross Settlement and separately paid the employer-side payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendants or its related entities based on the facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all PAGA claims alleged in the operative complaint and Plaintiffs' PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$9,000 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of Workweeks and/or Pay Periods based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as Isaiah Davis et al. v. RPM Juice, Inc. et al. (Case No. 21STCV14755), and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Defendants are asking the Court to approve. At least 16 Court days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ (url) or the Court's website _____ (url).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action (Isaiah Davis et al. v. RPM Juice, Inc. et al. (Case No. 21STCV14755))

and include your name, current address, telephone number, and approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at (time) _____ in Department 7 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to ILYM Group's website at _____ (url) _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. _____. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
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Telephone: (619)255-9047
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JCL Law Firm, APC

Jean-Claude Lapuyade, Esq.
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5440 Morehouse Drive, Suite 3600
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T: 619-599-8292
F: 619-599-8291
jlapuyade@jcl-lawfirm.com

Settlement Administrator:

ILYM Group

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT 2



Jean-Claude Lapuyade, Esq.
jlapuyade@jcl-lawfirm.com

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Tel: 619-599-8292
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Ben Greenberg, Of Counsel.
bgreenberg@jcl-lawfirm.com

February 8, 2021

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

RPM FOODS, INC.
c/o Reza Moalej
4335 Van Nuys Blvd., 102
Sherman Oaks, CA 91403
Via Certified Mail with Return Receipt
No. 7020 2450 0001 4373 5836

RPM JUICE, INC.
c/o Reza Moalej
4335 Van Nuys Blvd., 102
Sherman Oaks, CA 91403
Via Certified Mail with Return Receipt
No. 7020 2450 0001 4373 5829

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 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents ISAIAH DAVIS (“Plaintiff”) and other aggrieved employees in a class action against RPM JUICE, INC. and RPM FOODS, INC. (“Defendants”). This office intends to file the enclosed Class Action Complaint on behalf of Plaintiff and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Plaintiff was employed by Defendants from August 2019 to October 2020 in California. Plaintiff was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during his employment, Defendants failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods.

As a consequence, Plaintiff contends that Defendants failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Plaintiff contends that Defendants’ conduct violated 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 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendants. 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. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiffs and all aggrieved California employees and Class Members

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,
JCL LAW FIRM, APC

A handwritten signature in dark ink, appearing to read 'JC Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

ZAKAY LAW GROUP, APLC
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3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)255-9047
Facsimile: (858) 404-9203

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Jean-Claude Lapuyade (State Bar #248676)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)599-8292
Facsimile: (619) 599-8291

Attorneys for Plaintiffs

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

ISAIAH DAVIS, on behalf of himself and on
behalf of all persons similarly situated,

Plaintiffs,

v.

RPM JUICE, INC., a California Corporation;
RPM FOODS, INC., a California
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 9) UNPAID SICK PAY AND FAILURE TO PROVIDE PAID SICK LEAVE BALANCE IN VIOLATION OF CAL. LAB. CODE § 246, *et seq.*;

DEMAND FOR A JURY TRIAL

1 Plaintiff ISAIAH DAVIS, an individual, (“PLAINTIFF”), on behalf of himself and all other
2 similarly situated current and former employees, allege on information and belief, except for
3 their own acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant RPM JUICE, INC. is a California corporation and at all relevant times
6 mentioned herein conducted and continues to conduct substantial and regular business throughout
7 California.

8 2. Defendant RPM FOODS, INC. is a California corporation and at all relevant times
9 mentioned herein conducted and continues to conduct substantial and regular business throughout
10 California.

11 3. Defendants RPM JUICE, INC. and/or RPM FOODS, INC. were the joint
12 employers of PLAINTIFF as evidenced by the contracts signed by Defendants RPM JUICE, INC.
13 and/or RPM FOODS, INC. and PLAINTIFF, work performed by PLAINTIFF for Defendants
14 RPM JUICE, INC. and/or RPM FOODS, INC., and Defendants RPM JUICE, INC. and/or RPM
15 FOODS, INC. are therefore responsible as employers for the conduct alleged herein and referred
16 to collectively herein as “DEFENDANT”.

17 4. DEFENDANT is a California Corporation that owns and operates Jamba Juice
18 franchises throughout California, including in Los Angeles, California.

19 5. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
20 employee entitled to minimum wages, overtime pay and meal and rest periods from August 2019
21 to October, 2020.

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

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

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

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

THE CONDUCT

10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT'S control. Specifically, due to DEFENDANT'S unlawful policy of only compensating for overtime wages that were pre-approved by DEFENDANT, PLAINTIFF performed work before, during, and after their shifts, as well as during their meal breaks, spending time under DEFENDANT'S control for which they were not compensated. DEFENDANT's unlawful compensation policy resulted in PLAINTIFF and other CALIFORNIA CLASS Members being severely undercompensated for overtime compensation. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT'S uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business records.

11. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were also from time to time unable to take off duty meal breaks and were not fully relieved of duty for meal periods. Specifically, PLAINTIFF and CALIFORNIA CLASS Members were from time to time interrupted during their off-duty meal breaks to complete tasks for DEFENDANT. PLAINTIFF and other CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period each workday in which these employees were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

1 12. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
2 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
3 without being provided ten (10) minute rest periods. Further, these employees were denied their
4 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
5 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
6 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
7 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
8 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were often interrupted and
9 required by DEFENDANT to work during their rest breaks. When they did have an opportunity
10 to take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
11 remain on premises, and therefore on duty and on call, and subject to DEFENDANT's control in
12 accordance with DEFENDANT's policy. PLAINTIFF and other CALIFORNIA CLASS
13 Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous
14 work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically
15 denied their proper rest periods by DEFENDANT and DEFENDANT'S managers.

16 13. Under California law, every employer shall pay to each employee, on the
17 established payday for the period involved, not less than the applicable minimum wage for all
18 hours worked in the payroll period, whether the remuneration is measured by time, piece,
19 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time
20 during which an employee is subject to the control of an employer and includes all the time the
21 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFF and
22 other CALIFORNIA CLASS Members were from time to time required to perform work for
23 DEFENDANT before and after their scheduled shifts, as well as during their off-duty meal breaks.
24 DEFENDANT failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members for
25 any of the time spent under DEFENDANT's control while working off-the-clock. As such,
26 DEFENDANT failed to pay PLAINTIFF and other CALIFORNIA CLASS Members the
27 applicable minimum wage for all hours worked in a payroll period.
28

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

10 15. From time to time, when PLAINTIFF and other CALIFORNIA CLASS Members
11 worked during what was supposed to be their meal breaks or otherwise off the clock,
12 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
13 CLASS with complete and accurate wage statements which failed to show, among other things,
14 the correct time worked, including, work performed in excess of eight (8) hours in a workday
15 and/or forty (40) hours in any workweek, and the gross wages paid for those periods during the
16 pay period, and the correct penalty payments or missed meal and rest periods in violation of
17 California Labor Code Sections 226 and 226.2.

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

26 17. Aside from the violations listed herein, DEFENDANT, from time to time, failed
27 to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
28 Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and

1 the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
2 Code § 226.

3 18. California Labor Code Section 246 mandates that paid sick time for non-employees
4 shall be calculated in the same manner as the regular rate of pay for the workweek in which the
5 non-exempt employee uses paid sick time, whether or not the employee actually works overtime
6 in that workweek.

7 19. California Labor Code Section 246, *et seq.* requires an employer to furnish its
8 employees with written wage statements setting forth the amount of paid sick leave available.
9 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF
10 and other members of the CALIFORNIA CLASS with wage statements setting forth the amount
11 of paid sick leave available.

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

23 21. In the course of their employment, DEFENDANT required PLAINTIFF and other
24 CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance
25 of their job duties as employees for DEFENDANT. As a result, in the course of their employment
26 with DEFENDANT the PLAINTIFF and other members of the CALIFORNIA CLASS incurred
27 unreimbursed business expenses and an unlawful deduction of wages which included, but were
28

1 not limited to, costs related to the use of their personal cell phones all on behalf of and for the
2 benefit of DEFENDANT.

3 22. By reason of this uniform conduct applicable to PLAINTIFF and all
4 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
5 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
6 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
7 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
8 CLASS Members, and failed to pay PLAINTIFF and other CALIFORNIA CLASS Members the
9 correct overtime rate. The proper recording of these employees’ missed meal and rest breaks, and
10 proper payment of minimum wages and overtime, is the DEFENDANT’S burden. As a result of
11 DEFENDANT’S intentional disregard of the obligation to meet this burden, DEFENDANT failed
12 to properly pay all required compensation for work performed by the members of the
13 CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
14 thereunder as herein alleged.

15 23. Specifically, as to PLAINTIFF’s pay, PLAINTIFF was from time to time unable
16 to take off duty meal and rest breaks and were not fully relieved of duty for their rest and meal
17 periods. PLAINTIFF were required to perform work as ordered by DEFENDANT for more than
18 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
19 failed to provide PLAINTIFF with a second off-duty meal period each workday in which they
20 were required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided
21 PLAINTIFF with a rest break, they required PLAINTIFF to remain on the premises, on-duty and
22 on-call, for the rest break. PLAINTIFF therefore forfeited meal and rest breaks without additional
23 compensation and in accordance with DEFENDANT’S strict corporate policy and practice.
24 Further, as a result of DEFENDANT’s unlawful policy to only pay overtime wages for pre-
25 approved overtime hours, PLAINTIFF were not fully compensated for all time spent working for
26 and under DEFENDANT’s control. Moreover, DEFENDANT also provided PLAINTIFF with a
27 paystub that failed to accurately display PLAINTIFF’ correct time worked and wages, as well as
28 payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code

1 § 226(a). Further, DEFENDANT from time to time failed to provide PLAINTIFF with a wage
2 statement setting forth the amount of paid sick leave available to him, as required by Cal. Lab.
3 Code § 246, *et seq.* To date, DEFENDANT has not fully paid PLAINTIFF the overtime
4 compensation still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203.
5 The amount in controversy for PLAINTIFF individually do not exceed the sum or value of
6 \$75,000.

7 **JURISDICTION AND VENUE**

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

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

17 **THE CALIFORNIA CLASS**

18 26. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
19 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
20 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
21 individuals who are or previously were employed by DEFENDANT in California and classified
22 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
23 four (4) years prior to the filing of the original complaint and ending on the date as determined by
24 the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate
25 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

26 27. To the extent equitable tolling operates to toll claims by the CALIFORNIA
27 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
28 accordingly.

1 28. DEFENDANT, 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 DEFENDANT systematically failed to record all meal
5 and rest breaks missed by PLAINTIFF and the other members of the CALIFORNIA CLASS,
6 even though DEFENDANT enjoyed the benefit of this work, required employees to perform this
7 work and permitted or suffered to permit this work.

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

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

19 31. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
20 California law by:

- 21 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
22 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
23 policies, practices and procedures that failed to pay all wages due the
24 CALIFORNIA CLASS for all time worked;
- 25 b. Committing an act of unfair competition in violation of the California Unfair
26 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
27 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
28 members;

- 1 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
2 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
3 company policies, practices and procedures that uniformly and systematically
4 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
5 CLASS for all time worked, including minimum wages owed and overtime wages
6 owed for work performed by these employees; and
- 7 d. Committing an act of unfair competition in violation of the California Unfair
8 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
9 Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS
10 members with necessary expenses incurred in the discharge of their job duties.

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

- 13 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
14 joinder of all such persons is impracticable and the disposition of their claims as a
15 class will benefit the parties and the Court;
- 16 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
17 raised in this Complaint are common to the CALIFORNIA CLASS will apply
18 uniformly to every member of the CALIFORNIA CLASS;
- 19 c. The claims of the representative PLAINTIFF are typical of the claims of each
20 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
21 the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an
22 hourly basis who was subjected to the DEFENDANT’S deceptive practice and
23 policy which failed to provide the legally required meal and rest periods to the
24 CALIFORNIA CLASS and thereby systematically underpaid compensation to
25 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
26 as a result of DEFENDANT’S employment practices. PLAINTIFF and the
27 members of the CALIFORNIA CLASS were and are similarly or identically
28

1 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
2 misconduct engaged in by DEFENDANT; and

- 3 d. The representative PLAINTIFF will fairly and adequately represent and protect
4 the interest of the CALIFORNIA CLASS, and has retained counsel who are
5 competent and experienced in Class Action litigation. There are no material
6 conflicts between the claims of the representative PLAINTIFF and the members
7 of the CALIFORNIA CLASS that would make class certification inappropriate.
8 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
9 CALIFORNIA CLASS Members.

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

- 12 a. Without class certification and determination of declaratory, injunctive, statutory
13 and other legal questions within the class format, prosecution of separate actions
14 by individual members of the CALIFORNIA CLASS will create the risk of:
- 15 i. Inconsistent or varying adjudications with respect to individual members
16 of the CALIFORNIA CLASS which would establish incompatible
17 standards of conduct for the parties opposing the CALIFORNIA CLASS;
18 and/or;
- 19 ii. Adjudication with respect to individual members of the CALIFORNIA
20 CLASS which would as a practical matter be dispositive of interests of the
21 other members not party to the adjudication or substantially impair or
22 impede their ability to protect their interests.
- 23 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
24 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
25 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
26 DEFENDANT uniformly failed to pay all wages due for all time worked by the
27 members of the CALIFORNIA CLASS as required by law;
28

1 i. With respect to the First Cause of Action, the final relief on behalf of the
2 CALIFORNIA CLASS sought does not relate exclusively to restitution
3 because through this claim PLAINTIFF seek declaratory relief holding that
4 the DEFENDANT’S policy and practices constitute unfair competition,
5 along with declaratory relief, injunctive relief, and incidental equitable
6 relief as may be necessary to prevent and remedy the conduct declared to
7 constitute unfair competition;

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

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

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

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

25 2. Adjudications with respect to individual members of the
26 CALIFORNIA CLASS would as a practical matter be dispositive
27 of the interests of the other members not parties to the adjudication
28

1 or substantially impair or impede their ability to protect their
2 interests;

3 iii. In the context of wage litigation, because a substantial number of
4 individual CALIFORNIA CLASS Members will avoid asserting their legal
5 rights out of fear of retaliation by DEFENDANT, which may adversely
6 affect an individual's job with DEFENDANT or with a subsequent
7 employer, the Class Action is the only means to assert their claims through
8 a representative; and

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

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

16 a. The questions of law and fact common to the CALIFORNIA CLASS predominate
17 over any question affecting only individual CALIFORNIA CLASS Members
18 because the DEFENDANT'S employment practices are uniform and
19 systematically applied with respect to the CALIFORNIA CLASS.

20 b. A Class Action is superior to any other available method for the fair and efficient
21 adjudication of the claims of the members of the CALIFORNIA CLASS because
22 in the context of employment litigation a substantial number of individual
23 CALIFORNIA CLASS Members will avoid asserting their rights individually out
24 of fear of retaliation or adverse impact on their employment;

25 c. The members of the CALIFORNIA CLASS are so numerous that it is impractical
26 to bring all members of the CALIFORNIA CLASS before the Court;

- 1 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
2 obtain effective and economic legal redress unless the action is maintained as a
3 Class Action;
- 4 e. There is a community of interest in obtaining appropriate legal and equitable relief
5 for the acts of unfair competition, statutory violations and other improprieties, and
6 in obtaining adequate compensation for the damages and injuries which
7 DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- 8 f. There is a community of interest in ensuring that the combined assets of
9 DEFENDANT are sufficient to adequately compensate the members of the
10 CALIFORNIA CLASS for the injuries sustained;
- 11 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
12 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
13 respect to the CALIFORNIA CLASS as a whole;
- 14 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
15 business records of DEFENDANT; and
- 16 i. Class treatment provides manageable judicial treatment calculated to bring an
17 efficient and rapid conclusion to all litigation of all wage and hour related claims
18 arising out of the conduct of DEFENDANT as to the members of the
19 CALIFORNIA CLASS.

20 35. DEFENDANT maintain records from which the Court can ascertain and identify
21 by job title each of DEFENDANT'S employees who as have been systematically, intentionally
22 and uniformly subjected to DEFENDANT'S company policy, practices and procedures as herein
23 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
24 of similarly situated employees when they have been identified.

25 **THE CALIFORNIA LABOR SUB-CLASS**

26 36. PLAINTIFF further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth,
27 and Ninth causes of Action on behalf of a California sub-class, defined as all members of the
28 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-

1 CLASS”) at any time during the period three (3) years prior to the filing of the original complaint
2 and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS
3 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
4 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
5 (\$5,000,000.00).

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

18 38. DEFENDANT maintains records from which the Court can ascertain and identify
19 by name and job title, each of DEFENDANT’S employees who have been systematically,
20 intentionally and uniformly subjected to DEFENDANT’S company policy, practices and
21 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any
22 additional job titles of similarly situated employees when they have been identified.

23 39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
24 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 27 a. Whether DEFENDANT unlawfully failed to correctly pay compensation due to
28 members of the CALIFORNIA LABOR SUB- CLASS for missed meal and rest

- 1 breaks in violation of the California Labor Code and California regulations and the
2 applicable California Wage Order;
- 3 b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
4 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
5 thirty (30) minute meal breaks and rest periods;
- 6 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
7 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
8 statements;
- 9 d. Whether DEFENDANT unlawfully failed to correctly pay overtime, sick and/or
10 vacation compensation to members of the CALIFORNIA LABOR SUB-CLASS
11 in violation of the California Labor Code and California regulations and the
12 applicable California Wage Order;
- 13 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
14 compensation for time worked, including overtime worked, under the overtime
15 pay requirements of California law;
- 16 f. Whether DEFENDANTNT unlawfully failed to furnish written wage statements
17 setting forth the amount of paid sick leave available to PLAINTIFF and other
18 members of the CALIFORNIA LABOR SUB-CLASS;
- 19 g. Whether DEFENDANT has engaged in unfair competition by the above-listed
20 conduct;
- 21 h. The proper measure of damages and penalties owed to the members of the
22 CALIFORNIA LABOR SUB-CLASS; and
- 23 i. Whether DEFENDANT's conduct was willful.

24 41. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
25 under California law by:

- 26 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
27 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
28

overtime worked, for which DEFENDANT 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 DEFENDANT are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- c. 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;
- d. 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 all accurate rates in effect during the pay period and the corresponding amount of time worked at each overtime rate by the employee;
- e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members with necessary expenses incurred in the discharge of their job duties;
- f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment; and
- g. Violating Cal. Lab. Code § 246, which provides that an employer must furnish its employees with written wage statements setting forth the amount of paid sick leave available to them.

42. This 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 LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members 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 LABOR SUB-CLASS and will apply uniformly to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT’S practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT’S employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by DEFENDANT; and
- d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

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

- 1 a. Without class certification and determination of declaratory, injunctive, statutory
2 and other legal questions within the class format, prosecution of separate actions
3 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
4 the risk of:
- 5 i. Inconsistent or varying adjudications with respect to individual members
6 of the CALIFORNIA LABOR SUB-CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA LABOR SUB-CLASS; or
- 9 ii. Adjudication with respect to individual members of the CALIFORNIA
10 LABOR SUB-CLASS which would as a practical matter be dispositive of
11 interests of the other members not party to the adjudication or substantially
12 impair or impede their ability to protect their interests.
- 13 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
14 refused to act on grounds generally applicable to the CALIFORNIA LABOR
15 SUB-CLASS, making appropriate class-wide relief with respect to the
16 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly
17 failed to pay all wages due for all time worked by the members of the
18 CALIFORNIA LABOR SUB-CLASS as required by law;
- 19 c. Common questions of law and fact predominate as to the members of the
20 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations
21 of California Law as listed above, and predominate over any question affecting
22 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
23 Action is superior to other available methods for the fair and efficient adjudication
24 of the controversy, including consideration of:
- 25 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
26 in individually controlling the prosecution or defense of separate actions in
27 that the substantial expense of individual actions will be avoided to recover
28 the relatively small amount of economic losses sustained by the individual

- 1 CALIFORNIA LABOR SUB-CLASS Members when compared to the
2 substantial expense and burden of individual prosecution of this litigation;
3 ii. Class certification will obviate the need for unduly duplicative litigation
4 that would create the risk of:
- 5 1. Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA LABOR SUB-CLASS, which
7 would establish incompatible standards of conduct for the
8 DEFENDANT; and/or,
 - 9 2. Adjudications with respect to individual members of the
10 CALIFORNIA LABOR SUB-CLASS would as a practical matter
11 be dispositive of the interests of the other members not parties to
12 the adjudication or substantially impair or impede their ability to
13 protect their interests;
- 14 iii. In the context of wage litigation because a substantial number of individual
15 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their
16 legal rights out of fear of retaliation by DEFENDANT, which may
17 adversely affect an individual's job with DEFENDANT or with a
18 subsequent employer, the Class Action is the only means to assert their
19 claims through a representative; and,
- 20 iv. A class action is superior to other available methods for the fair and
21 efficient adjudication of this litigation because class treatment will obviate
22 the need for unduly and unnecessary duplicative litigation that is likely to
23 result in the absence of certification of this action pursuant to Cal. Code of
24 Civ. Proc. § 382.

25 44. This Court should permit this action to be maintained as a Class Action pursuant
26 to Cal. Code of Civ. Proc. § 382 because:
27
28

- 1 a. The questions of law and fact common to the CALIFORNIA LABOR SUB-
2 CLASS predominate over any question affecting only individual CALIFORNIA
3 LABOR SUB-CLASS Members;
- 4 b. A Class Action is superior to any other available method for the fair and efficient
5 adjudication of the claims of the members of the CALIFORNIA LABOR SUB-
6 CLASS because in the context of employment litigation a substantial number of
7 individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
8 their rights individually out of fear of retaliation or adverse impact on their
9 employment;
- 10 c. The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that
11 it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS
12 before the Court;
- 13 d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will
14 not be able to obtain effective and economic legal redress unless the action is
15 maintained as a Class Action;
- 16 e. There is a community of interest in obtaining appropriate legal and equitable relief
17 for the acts of unfair competition, statutory violations and other improprieties, and
18 in obtaining adequate compensation for the damages and injuries which
19 DEFENDANT’S actions have inflicted upon the CALIFORNIA LABOR SUB-
20 CLASS;
- 21 f. There is a community of interest in ensuring that the combined assets of
22 DEFENDANT are sufficient to adequately compensate the members of the
23 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 24 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
25 CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief
26 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 27 h. The members of the CALIFORNIA LABOR SUB-CLASS are readily
28 ascertainable from the business records of DEFENDANT. The CALIFORNIA

LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and

- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES

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

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

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

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

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

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

48. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,

1 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
2 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
3 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

10 50. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
11 fraudulent in that DEFENDANT’S uniform policy and practice failed to pay PLAINTIFF, and
12 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
13 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,
14 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
15 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
16 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
17 wrongfully withheld.

18 51. By the conduct alleged herein, DEFENDANT’S practices were also unlawful,
19 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFF and the
20 other members of the CALIFORNIA CLASS to be underpaid during their employment with
21 DEFENDANT.

22 52. By the conduct alleged herein, DEFENDANT’S practices were also unfair and
23 deceptive in that DEFENDANT’S uniform policies, practices and procedures failed to provide
24 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

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

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

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

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

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

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

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANT are restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**
7 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

8 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
9 **DEFENDANT)**

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

13 61. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
14 bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code
15 and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately
16 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

19 63. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
20 commission is the minimum wage to be paid to employees, and the payment of a wage less than
21 the minimum so fixed is unlawful.

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

24 65. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
25 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
26 of time they work. As set forth herein, DEFENDANT'S uniform policy and practice was to
27 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS.

1 66. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
3 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
4 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
5 pay.

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

12 68. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
14 the correct minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME COMPENSATION**

22 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

23 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
24 **DEFENDANT)**

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

28 75. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code

1 and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately
2 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the
3 CALIFORNIA LABOR SUB-CLASS and DEFENDANT'S failure to properly compensate the
4 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
5 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

16 79. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
17 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
18 of overtime worked. As set forth herein, DEFENDANT'S uniform policy and practice was to
19 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
20 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
21 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for all
22 overtime worked.

23 80. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
24 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
25 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
26 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
27 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
28 in any workweek.

81. In committing these violations of the California Labor Code, DEFENDANT
inaccurately calculated the amount of overtime worked and consequently underpaid the actual

1 time worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
2 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
3 benefits in violation of the California Labor Code, the Industrial Welfare Commission
4 requirements and other applicable laws and regulations.

5 82. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
7 full compensation for all overtime worked.

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

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

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

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

87. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime worked. DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the applicable overtime rate.

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED MEAL PERIODS (Cal. Lab. Code §§ 226.7 & 512)

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

90. 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.

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

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS (Cal. Lab. Code §§ 226.7 & 512)

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

94. 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.

95. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT'S managers. When DEFENDANT provided PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with rest break, they required PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members to stay on DEFENDANT'S premises for those rest breaks.

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

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

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES

(Cal. Lab. Code §§ 2802)

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

98. 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.

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

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

100. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. In the course of their employment, DEFENDANT required PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members to use their personal cell phones as a result of and in furtherance of their job duties as employees for DEFENDANT. As a result, in the course of their employment with DEFENDANT the PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses and an unlawful deduction of wages which included, but were not limited to, costs related to the use of their personal cell phones. DEFENDANT'S uniform policy, practice and procedure was to cause PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members to incur personal business expenses from using DEFENDANT'S work-issued vehicles by deducting these expenses from PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members' wages. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT'S conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

7 **(Cal. Lab. Code §§ 226 and 226.2)**

8 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
9 **DEFENDANT)**

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

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

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

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

4 104. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate

5 employees with an “accurate itemized” statement in writing showing:

- 6 a. The total hours of compensable rest and recovery periods, the rate of
- 7 compensation, and the gross wages paid for those periods during the
- 8 pay period; and
- 9 b. The total hours of other nonproductive time, the rate of
- 10 compensation, and the gross wages paid for that time during the pay
- 11 period.

12 105. When DEFENDANT did not accurately record PLAINTIFF’ and other

13 CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANT also

14 failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete

15 and accurate wage statements which failed to show, among other things, the correct overtime rate,

16 the correct number of hours worked, missed meal and rest periods, owed to PLAINTIFF and other

17 CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall

18 furnish each of his or her employees with an accurate itemized wage statement in writing showing,

19 among other things, gross wages earned and all applicable hourly rates in effect during the pay

20 period and the corresponding amount of time worked at each hourly rate. Aside from the

21 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized

22 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,

23 from time to time DEFENDANT provided PLAINTIFF and the other members of the

24 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

25 106. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code

26 § 226, causing injury and damages to the PLAINTIFF and the other members of the

27 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs

28 expended calculating the correct rates for the overtime worked and the amount of employment

1 taxes which were not properly paid to state and federal tax authorities. These damages are difficult
2 to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
3 CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period
4 in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a
5 subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the
6 time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and
7 each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

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15 **EIGHTH CAUSE OF ACTION**
16 **FAILURE TO PAY WAGES WHEN DUE**
17 **(Cal. Lab. Code §§201, 202, 203)**

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

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

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

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

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

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

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

14 111. There was no definite term in PLAINTIFF’ or any CALIFORNIA LABOR SUB-
15 CLASS Members’ employment contract.

16 112. Cal. Lab. Code § 203 provides:

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

22 113. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
23 Members terminated and DEFENDANT has not tendered payment of wages, to these employees
24 who missed meal and rest breaks, as required by law. To the extent DEFENDANT tendered partial
25 payment of wages to terminated CALIFORNIA LABOR SUB-CLASS Members, that payment
26 was late.

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

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

9 120. Cal. Lab. Code § 246(i) provides that:

10 An employer shall provide an employee with written notice that sets forth the
11 amount of paid sick leave available, or paid time off leave an employer provides
12 in lieu of sick leave, for use on either the employee's itemized wage statement
13 described in Section 226 or in a separate writing provided on the designated pay
14 date with the employee's payment of wages. If an employer provides unlimited
15 paid sick leave or unlimited paid time off to an employee, the employer may satisfy
16 this section by indicating on the notice or the employee's itemized wage statement
17 "unlimited."

18 121. From time to time, DEFENDANT failed to furnish PLAINTIFF and other
19 members of the CALIFORNIA LABOR SUB-CLASS with written wage statements setting forth
20 the amount of paid sick leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.*
21 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR-SUBCLASS are
22 entitled to seek and recover statutory costs.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANT, jointly and
25 severally, as follows:

26 1. On behalf of the CALIFORNIA CLASS:

- 27 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
28 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining
DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANT to pay all wages and all sums unlawfully

withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and

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

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

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

b. Compensatory damages, according to proof at trial, including compensatory damages for minimum wages, overtime wages, unreimbursed expenses, and other compensation due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

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

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

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

f. The statutory damages and an award of costs for violation of Cal. Lab. Code § 246.

3. On all claims:

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

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

1 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
2 including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or
3 §1197.

4 DATED: _____, 2021

5
6 **ZAKAY LAW GROUP, APLC**

7 By: _____

8 Shani O. Zakay
9 Attorney for Plaintiffs
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18 **DEMAND FOR A JURY TRIAL**

19
20 PLAINTIFF demands a jury trial on issues triable to a jury.

21 DATED: _____, 2021

22 **ZAKAY LAW GROUP, APLC**

23
24 By: _____

25
26 Shani O. Zakay
27 Attorney for Plaintiffs
28

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:

RPM Juice, Inc.
 c/o Beta Models
 4335 Van Nuys Blvd, 102
 Sherman Oaks, CA 91403



9590 9402 5466 9249 9968 58

2. Article Number (Transfer from service label)

7020 2450 0001 4373 5829

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X BS RIS C-19

☒ Agent
☐ Addressee

B. Received by (Printed Name)

John

C. Date of Delivery

2/12/21

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

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Mail Restricted Delivery | |

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:

RPM Foods, Inc.
 c/o Beta Models
 4335 Van Nuys Blvd, 102
 Sherman Oaks, CA 91403



9590 9402 5466 9249 9968 41

2. Article Number (Transfer from service label)

7020 2450 0001 4373 5836

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X BS RIS C-19

☒ Agent
☐ Addressee

B. Received by (Printed Name)

John

C. Date of Delivery

2/12/21

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

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Mail Restricted Delivery | |

Domestic Return Receipt

EXHIBIT 3



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client: 35201

April 23, 2021

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

Labor & Workforce Development Agency Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, CA 94612 PAGA@dir.ca.gov <i>Via Online Submission</i>	RPM FOODS, INC. c/o Reza Moalej 4335 Van Nuys Blvd., 102 Sherman Oaks, CA 91403 <i>Via Certified Mail with Return Receipt No. 7021 0350 0001 8165 1668</i>
RPM JUICE, INC. c/o Reza Moalej 4335 Van Nuys Blvd., 102 Sherman Oaks, CA 91403 <i>Via Certified Mail with Return Receipt No. 7021 0350 0001 8165 1651</i>	

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 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/Madam:

Our offices represent Plaintiff Charles Harrell (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against RPM JUICE, INC. and RPM FOODS, INC. (“Defendants”). Plaintiff was employed by Defendants in California between 2016 to September of 2020. Plaintiff was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during his employment, Defendants failed to, among other things, provide Plaintiff, and all those similarly situated, with all legally mandated off-duty meal and rest periods.

As a consequence, Plaintiff contends that Defendants failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Plaintiff contends that Defendants’ conduct violated 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 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

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

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendants. 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. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiffs and all aggrieved California employees and Class Members

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

Sincerely,



Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)255-9047
Facsimile: (858) 404-9203

Attorneys for Plaintiffs

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

CHARLES HARRELL, on behalf of himself
and on behalf of all persons similarly
situated,

Plaintiffs,

v.

RPM JUICE, INC., a California Corporation;
RPM FOODS, INC., a California
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
- 7) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE §§226 and 226.2;
- 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
- 9) UNPAID SICK PAY AND FAILURE TO PROVIDE PAID SICK LEAVE BALANCE IN VIOLATION OF CAL. LAB. CODE § 246, *et seq*;

DEMAND FOR A JURY TRIAL

1 Plaintiff CHARLES HARRELL, an individual, (“PLAINTIFF”), on behalf of himself and
2 all other similarly situated current and former employees, allege on information and belief,
3 except for their own acts and knowledge which are based on personal knowledge, the following:

4 **PRELIMINARY ALLEGATIONS**

5 1. Defendant RPM JUICE, INC. is a California corporation and at all relevant times
6 mentioned herein conducted and continues to conduct substantial and regular business throughout
7 California.

8 2. Defendant RPM FOODS, INC. is a California corporation and at all relevant times
9 mentioned herein conducted and continues to conduct substantial and regular business throughout
10 California.

11 3. Defendants RPM JUICE, INC. and/or RPM FOODS, INC. were the joint
12 employers of PLAINTIFF as evidenced by the contracts signed by Defendants RPM JUICE, INC.
13 and/or RPM FOODS, INC. and PLAINTIFF, work performed by PLAINTIFF for Defendants
14 RPM JUICE, INC. and/or RPM FOODS, INC., and Defendants RPM JUICE, INC. and/or RPM
15 FOODS, INC. are therefore responsible as employers for the conduct alleged herein and referred
16 to collectively herein as “DEFENDANT”.

17 4. DEFENDANT is a California Corporation that owns and operates Jamba Juice
18 franchises throughout California, including in Los Angeles, California.

19 5. PLAINTIFF was employed by DEFENDANT in California as a non-exempt
20 employee entitled to minimum wages, overtime pay and meal and rest periods from 2016 to
21 September 2020.

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

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

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

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

THE CONDUCT

10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT'S control. Specifically, due to DEFENDANT'S unlawful policy of only compensating for overtime wages that were pre-approved by DEFENDANT, PLAINTIFF performed work before, during, and after their shifts, as well as during their meal breaks, spending time under DEFENDANT'S control for which they were not compensated. DEFENDANT's unlawful compensation policy resulted in PLAINTIFF and other CALIFORNIA CLASS Members being severely undercompensated for overtime compensation. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT'S uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business records.

11. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were also from time to time unable to take off duty meal breaks and were not fully relieved of duty for meal periods. Specifically, PLAINTIFF and CALIFORNIA CLASS Members were from time to time interrupted during their off-duty meal breaks to complete tasks for DEFENDANT. PLAINTIFF and other CALIFORNIA CLASS Members were required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period each workday in which these employees were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

1 12. During the CALIFORNIA CLASS PERIOD, from time to time, PLAINTIFF and
2 other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours
3 without being provided ten (10) minute rest periods. Further, these employees were denied their
4 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
5 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
6 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
7 some shifts worked of ten (10) hours or more. When they did have an opportunity to take their
8 rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were often interrupted and
9 required by DEFENDANT to work during their rest breaks. When they did have an opportunity
10 to take their rest breaks, PLAINTIFF and the CALIFORNIA CLASS Members were required to
11 remain on premises, and therefore on duty and on call, and subject to DEFENDANT's control in
12 accordance with DEFENDANT's policy. PLAINTIFF and other CALIFORNIA CLASS
13 Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous
14 work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically
15 denied their proper rest periods by DEFENDANT and DEFENDANT'S managers.

16 13. Under California law, every employer shall pay to each employee, on the
17 established payday for the period involved, not less than the applicable minimum wage for all
18 hours worked in the payroll period, whether the remuneration is measured by time, piece,
19 commission, or otherwise. Hours worked is defined in the applicable Wage Order as "the time
20 during which an employee is subject to the control of an employer and includes all the time the
21 employee is suffered or permitted to work, whether or not required to do so." PLAINTIFF and
22 other CALIFORNIA CLASS Members were from time to time required to perform work for
23 DEFENDANT before and after their scheduled shifts, as well as during their off-duty meal breaks.
24 DEFENDANT failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members for
25 any of the time spent under DEFENDANT's control while working off-the-clock. As such,
26 DEFENDANT failed to pay PLAINTIFF and other CALIFORNIA CLASS Members the
27 applicable minimum wage for all hours worked in a payroll period.
28

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

10 15. From time to time, when PLAINTIFF and other CALIFORNIA CLASS Members
11 worked during what was supposed to be their meal breaks or otherwise off the clock,
12 DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA
13 CLASS with complete and accurate wage statements which failed to show, among other things,
14 the correct time worked, including, work performed in excess of eight (8) hours in a workday
15 and/or forty (40) hours in any workweek, and the gross wages paid for those periods during the
16 pay period, and the correct penalty payments or missed meal and rest periods in violation of
17 California Labor Code Sections 226 and 226.2.

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

26 17. Aside from the violations listed herein, DEFENDANT, from time to time, failed
27 to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
28 Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and

1 the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
2 Code § 226.

3 18. California Labor Code Section 246 mandates that paid sick time for non-employees
4 shall be calculated in the same manner as the regular rate of pay for the workweek in which the
5 non-exempt employee uses paid sick time, whether or not the employee actually works overtime
6 in that workweek.

7 19. California Labor Code Section 246, *et seq.* requires an employer to furnish its
8 employees with written wage statements setting forth the amount of paid sick leave available.
9 From time to time, DEFENDANT violated Cal. Lab. Code § 246 by failing to furnish PLAINTIFF
10 and other members of the CALIFORNIA CLASS with wage statements setting forth the amount
11 of paid sick leave available.

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

23 21. In the course of their employment, DEFENDANT required PLAINTIFF and other
24 CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance
25 of their job duties as employees for DEFENDANT. As a result, in the course of their employment
26 with DEFENDANT the PLAINTIFF and other members of the CALIFORNIA CLASS incurred
27 unreimbursed business expenses and an unlawful deduction of wages which included, but were
28

1 not limited to, costs related to the use of their personal cell phones all on behalf of and for the
2 benefit of DEFENDANT.

3 22. By reason of this uniform conduct applicable to PLAINTIFF and all
4 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
5 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
6 “UCL”), by engaging in a company-wide policy and procedure which failed to accurately
7 calculate and record all missed meal and rest periods by PLAINTIFF and other CALIFORNIA
8 CLASS Members, and failed to pay PLAINTIFF and other CALIFORNIA CLASS Members the
9 correct overtime rate. The proper recording of these employees’ missed meal and rest breaks, and
10 proper payment of minimum wages and overtime, is the DEFENDANT’S burden. As a result of
11 DEFENDANT’S intentional disregard of the obligation to meet this burden, DEFENDANT failed
12 to properly pay all required compensation for work performed by the members of the
13 CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
14 thereunder as herein alleged.

15 23. Specifically, as to PLAINTIFF’s pay, PLAINTIFF was from time to time unable
16 to take off duty meal and rest breaks and were not fully relieved of duty for their rest and meal
17 periods. PLAINTIFF were required to perform work as ordered by DEFENDANT for more than
18 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
19 failed to provide PLAINTIFF with a second off-duty meal period each workday in which they
20 were required by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided
21 PLAINTIFF with a rest break, they required PLAINTIFF to remain on the premises, on-duty and
22 on-call, for the rest break. PLAINTIFF therefore forfeited meal and rest breaks without additional
23 compensation and in accordance with DEFENDANT’S strict corporate policy and practice.
24 Further, as a result of DEFENDANT’s unlawful policy to only pay overtime wages for pre-
25 approved overtime hours, PLAINTIFF were not fully compensated for all time spent working for
26 and under DEFENDANT’s control. Moreover, DEFENDANT also provided PLAINTIFF with a
27 paystub that failed to accurately display PLAINTIFF’ correct time worked and wages, as well as
28 payments for missed meal and rest periods for certain pay periods in violation of Cal. Lab. Code

1 § 226(a). Further, DEFENDANT from time to time failed to provide PLAINTIFF with a wage
2 statement setting forth the amount of paid sick leave available to him, as required by Cal. Lab.
3 Code § 246, *et seq.* To date, DEFENDANT has not fully paid PLAINTIFF the overtime
4 compensation still owed to them or any penalty wages owed to them under Cal. Lab. Code § 203.
5 The amount in controversy for PLAINTIFF individually do not exceed the sum or value of
6 \$75,000.

7 **JURISDICTION AND VENUE**

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

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

17 **THE CALIFORNIA CLASS**

18 26. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
19 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
20 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
21 individuals who are or previously were employed by DEFENDANT in California and classified
22 as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning
23 four (4) years prior to the filing of the original complaint and ending on the date as determined by
24 the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate
25 claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

26 27. To the extent equitable tolling operates to toll claims by the CALIFORNIA
27 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
28 accordingly.

1 28. DEFENDANT, 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 DEFENDANT systematically failed to record all meal
5 and rest breaks missed by PLAINTIFF and the other members of the CALIFORNIA CLASS,
6 even though DEFENDANT enjoyed the benefit of this work, required employees to perform this
7 work and permitted or suffered to permit this work.

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

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

19 31. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under
20 California law by:

- 21 a. Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§
22 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place company
23 policies, practices and procedures that failed to pay all wages due the
24 CALIFORNIA CLASS for all time worked;
- 25 b. Committing an act of unfair competition in violation of the California Unfair
26 Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by failing to provide
27 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
28 members;

- 1 c. Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code
2 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in place
3 company policies, practices and procedures that uniformly and systematically
4 failed to record and pay PLAINTIFF and other members of the CALIFORNIA
5 CLASS for all time worked, including minimum wages owed and overtime wages
6 owed for work performed by these employees; and
7 d. Committing an act of unfair competition in violation of the California Unfair
8 Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by violating Cal. Lab.
9 Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA CLASS
10 members with necessary expenses incurred in the discharge of their job duties.

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

- 13 a. The persons who comprise the CALIFORNIA CLASS are so numerous that the
14 joinder of all such persons is impracticable and the disposition of their claims as a
15 class will benefit the parties and the Court;
16 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
17 raised in this Complaint are common to the CALIFORNIA CLASS will apply
18 uniformly to every member of the CALIFORNIA CLASS;
19 c. The claims of the representative PLAINTIFF are typical of the claims of each
20 member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of
21 the CALIFORNIA CLASS, were classified as a non- exempt employee paid on an
22 hourly basis who was subjected to the DEFENDANT’S deceptive practice and
23 policy which failed to provide the legally required meal and rest periods to the
24 CALIFORNIA CLASS and thereby systematically underpaid compensation to
25 PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury
26 as a result of DEFENDANT’S employment practices. PLAINTIFF and the
27 members of the CALIFORNIA CLASS were and are similarly or identically
28

1 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
2 misconduct engaged in by DEFENDANT; and

- 3 d. The representative PLAINTIFF will fairly and adequately represent and protect
4 the interest of the CALIFORNIA CLASS, and has retained counsel who are
5 competent and experienced in Class Action litigation. There are no material
6 conflicts between the claims of the representative PLAINTIFF and the members
7 of the CALIFORNIA CLASS that would make class certification inappropriate.
8 Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all
9 CALIFORNIA CLASS Members.

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

- 12 a. Without class certification and determination of declaratory, injunctive, statutory
13 and other legal questions within the class format, prosecution of separate actions
14 by individual members of the CALIFORNIA CLASS will create the risk of:
- 15 i. Inconsistent or varying adjudications with respect to individual members
16 of the CALIFORNIA CLASS which would establish incompatible
17 standards of conduct for the parties opposing the CALIFORNIA CLASS;
18 and/or;
- 19 ii. Adjudication with respect to individual members of the CALIFORNIA
20 CLASS which would as a practical matter be dispositive of interests of the
21 other members not party to the adjudication or substantially impair or
22 impede their ability to protect their interests.
- 23 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on
24 grounds generally applicable to the CALIFORNIA CLASS, making appropriate
25 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
26 DEFENDANT uniformly failed to pay all wages due for all time worked by the
27 members of the CALIFORNIA CLASS as required by law;
28

1 i. With respect to the First Cause of Action, the final relief on behalf of the
2 CALIFORNIA CLASS sought does not relate exclusively to restitution
3 because through this claim PLAINTIFF seek declaratory relief holding that
4 the DEFENDANT’S policy and practices constitute unfair competition,
5 along with declaratory relief, injunctive relief, and incidental equitable
6 relief as may be necessary to prevent and remedy the conduct declared to
7 constitute unfair competition;

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

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

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

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

25 2. Adjudications with respect to individual members of the
26 CALIFORNIA CLASS would as a practical matter be dispositive
27 of the interests of the other members not parties to the adjudication
28

1 or substantially impair or impede their ability to protect their
2 interests;

3 iii. In the context of wage litigation, because a substantial number of
4 individual CALIFORNIA CLASS Members will avoid asserting their legal
5 rights out of fear of retaliation by DEFENDANT, which may adversely
6 affect an individual's job with DEFENDANT or with a subsequent
7 employer, the Class Action is the only means to assert their claims through
8 a representative; and

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

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

16 a. The questions of law and fact common to the CALIFORNIA CLASS predominate
17 over any question affecting only individual CALIFORNIA CLASS Members
18 because the DEFENDANT'S employment practices are uniform and
19 systematically applied with respect to the CALIFORNIA CLASS.

20 b. A Class Action is superior to any other available method for the fair and efficient
21 adjudication of the claims of the members of the CALIFORNIA CLASS because
22 in the context of employment litigation a substantial number of individual
23 CALIFORNIA CLASS Members will avoid asserting their rights individually out
24 of fear of retaliation or adverse impact on their employment;

25 c. The members of the CALIFORNIA CLASS are so numerous that it is impractical
26 to bring all members of the CALIFORNIA CLASS before the Court;

- 1 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to
2 obtain effective and economic legal redress unless the action is maintained as a
3 Class Action;
- 4 e. There is a community of interest in obtaining appropriate legal and equitable relief
5 for the acts of unfair competition, statutory violations and other improprieties, and
6 in obtaining adequate compensation for the damages and injuries which
7 DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- 8 f. There is a community of interest in ensuring that the combined assets of
9 DEFENDANT are sufficient to adequately compensate the members of the
10 CALIFORNIA CLASS for the injuries sustained;
- 11 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
12 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with
13 respect to the CALIFORNIA CLASS as a whole;
- 14 h. The members of the CALIFORNIA CLASS are readily ascertainable from the
15 business records of DEFENDANT; and
- 16 i. Class treatment provides manageable judicial treatment calculated to bring an
17 efficient and rapid conclusion to all litigation of all wage and hour related claims
18 arising out of the conduct of DEFENDANT as to the members of the
19 CALIFORNIA CLASS.

20 35. DEFENDANT maintain records from which the Court can ascertain and identify
21 by job title each of DEFENDANT'S employees who as have been systematically, intentionally
22 and uniformly subjected to DEFENDANT'S company policy, practices and procedures as herein
23 alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles
24 of similarly situated employees when they have been identified.

25 **THE CALIFORNIA LABOR SUB-CLASS**

26 36. PLAINTIFF further bring the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth,
27 and Ninth causes of Action on behalf of a California sub-class, defined as all members of the
28 CALIFORNIA CLASS classified as non-exempt employees (the "CALIFORNIA LABOR SUB-

1 CLASS”) at any time during the period three (3) years prior to the filing of the original complaint
2 and ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS
3 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
4 aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
5 (\$5,000,000.00).

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

18 38. DEFENDANT maintains records from which the Court can ascertain and identify
19 by name and job title, each of DEFENDANT’S employees who have been systematically,
20 intentionally and uniformly subjected to DEFENDANT’S company policy, practices and
21 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any
22 additional job titles of similarly situated employees when they have been identified.

23 39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
24 CALIFORNIA LABOR SUB-CLASS Members is impracticable

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

- 27 a. Whether DEFENDANT unlawfully failed to correctly pay compensation due to
28 members of the CALIFORNIA LABOR SUB- CLASS for missed meal and rest

- 1 breaks in violation of the California Labor Code and California regulations and the
2 applicable California Wage Order;
- 3 b. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
4 the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted
5 thirty (30) minute meal breaks and rest periods;
- 6 c. Whether DEFENDANT failed to provide PLAINTIFF and the other members of
7 the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage
8 statements;
- 9 d. Whether DEFENDANT unlawfully failed to correctly pay overtime, sick and/or
10 vacation compensation to members of the CALIFORNIA LABOR SUB-CLASS
11 in violation of the California Labor Code and California regulations and the
12 applicable California Wage Order;
- 13 e. Whether the members of the CALIFORNIA LABOR SUB-CLASS are entitled to
14 compensation for time worked, including overtime worked, under the overtime
15 pay requirements of California law;
- 16 f. Whether DEFENDANTNT unlawfully failed to furnish written wage statements
17 setting forth the amount of paid sick leave available to PLAINTIFF and other
18 members of the CALIFORNIA LABOR SUB-CLASS;
- 19 g. Whether DEFENDANT has engaged in unfair competition by the above-listed
20 conduct;
- 21 h. The proper measure of damages and penalties owed to the members of the
22 CALIFORNIA LABOR SUB-CLASS; and
- 23 i. Whether DEFENDANT's conduct was willful.

24 41. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
25 under California law by:

- 26 a. Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay PLAINTIFF
27 and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for
28

- 1 overtime worked, for which DEFENDANT are liable pursuant to Cal. Lab. Code
2 § 1194;
- 3 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately
4 pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
5 the correct minimum wage pay for which DEFENDANT are liable pursuant to
6 Cal. Lab. Code §§ 1194 and 1197;
- 7 c. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and
8 the other members of the CALIFORNIA CLASS with all legally required off-duty,
9 uninterrupted thirty (30) minute meal breaks and the legally required rest breaks;
- 10 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
11 members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized
12 statement in writing showing all accurate rates in effect during the pay period and
13 the corresponding amount of time worked at each overtime rate by the employee;
- 14 e. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the
15 CALIFORNIA CLASS members with necessary expenses incurred in the
16 discharge of their job duties;
- 17 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an
18 employee is discharged or quits from employment, the employer must pay the
19 employee all wages due without abatement, by failing to tender full payment
20 and/or restitution of wages owed or in the manner required by California law to
21 the members of the CALIFORNIA LABOR SUB-CLASS who have terminated
22 their employment; and
- 23 g. Violating Cal. Lab. Code § 246, which provides that an employer must furnish its
24 employees with written wage statements setting forth the amount of paid sick leave
25 available to them.

26 42. This Class Action meets the statutory prerequisites for the maintenance of a Class
27 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:
28

- 1 a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so
2 numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members
3 is impracticable and the disposition of their claims as a class will benefit the parties
4 and the Court;
- 5 b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
6 raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS
7 and will apply uniformly to every member of the CALIFORNIA LABOR SUB-
8 CLASS;
- 9 c. The claims of the representative PLAINTIFF are typical of the claims of each
10 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the
11 other members of the CALIFORNIA LABORSUB-CLASS, was a non-exempt
12 employee paid on an hourly basis who was subjected to the DEFENDANT’S
13 practice and policy which failed to pay the correct amount of wages due to the
14 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as
15 a result of DEFENDANT’S employment practices. PLAINTIFF and the members
16 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically
17 harmed by the same unlawful, deceptive, unfair and pervasive pattern of
18 misconduct engaged in by DEFENDANT; and
- 19 d. The representative PLAINTIFF will fairly and adequately represent and protect
20 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel
21 who are competent and experienced in Class Action litigation. There are no
22 material conflicts between the claims of the representative PLAINTIFF and the
23 members of the CALIFORNIA LABOR SUB-CLASS that would make class
24 certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
25 will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
26 Members.

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

- 1 a. Without class certification and determination of declaratory, injunctive, statutory
2 and other legal questions within the class format, prosecution of separate actions
3 by individual members of the CALIFORNIA LABOR SUB-CLASS will create
4 the risk of:
- 5 i. Inconsistent or varying adjudications with respect to individual members
6 of the CALIFORNIA LABOR SUB-CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA LABOR SUB-CLASS; or
- 9 ii. Adjudication with respect to individual members of the CALIFORNIA
10 LABOR SUB-CLASS which would as a practical matter be dispositive of
11 interests of the other members not party to the adjudication or substantially
12 impair or impede their ability to protect their interests.
- 13 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or
14 refused to act on grounds generally applicable to the CALIFORNIA LABOR
15 SUB-CLASS, making appropriate class-wide relief with respect to the
16 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly
17 failed to pay all wages due for all time worked by the members of the
18 CALIFORNIA LABOR SUB-CLASS as required by law;
- 19 c. Common questions of law and fact predominate as to the members of the
20 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations
21 of California Law as listed above, and predominate over any question affecting
22 only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class
23 Action is superior to other available methods for the fair and efficient adjudication
24 of the controversy, including consideration of:
- 25 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS
26 in individually controlling the prosecution or defense of separate actions in
27 that the substantial expense of individual actions will be avoided to recover
28 the relatively small amount of economic losses sustained by the individual

- 1 CALIFORNIA LABOR SUB-CLASS Members when compared to the
2 substantial expense and burden of individual prosecution of this litigation;
3 ii. Class certification will obviate the need for unduly duplicative litigation
4 that would create the risk of:
- 5 1. Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA LABOR SUB-CLASS, which
7 would establish incompatible standards of conduct for the
8 DEFENDANT; and/or,
 - 9 2. Adjudications with respect to individual members of the
10 CALIFORNIA LABOR SUB-CLASS would as a practical matter
11 be dispositive of the interests of the other members not parties to
12 the adjudication or substantially impair or impede their ability to
13 protect their interests;
 - 14 iii. In the context of wage litigation because a substantial number of individual
15 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their
16 legal rights out of fear of retaliation by DEFENDANT, which may
17 adversely affect an individual's job with DEFENDANT or with a
18 subsequent employer, the Class Action is the only means to assert their
19 claims through a representative; and,
 - 20 iv. A class action is superior to other available methods for the fair and
21 efficient adjudication of this litigation because class treatment will obviate
22 the need for unduly and unnecessary duplicative litigation that is likely to
23 result in the absence of certification of this action pursuant to Cal. Code of
24 Civ. Proc. § 382.

25 44. This Court should permit this action to be maintained as a Class Action pursuant
26 to Cal. Code of Civ. Proc. § 382 because:
27
28

- 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;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA

LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members classified as non-exempt employees during the CALIFORNIA LABOR SUB-CLASS PERIOD; and

- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES

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

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

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

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

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

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

48. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 201, 202, 203, 204, 206.5, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,

1 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
2 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
3 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

10 50. By the conduct alleged herein, DEFENDANT’S practices were deceptive and
11 fraudulent in that DEFENDANT’S uniform policy and practice failed to pay PLAINTIFF, and
12 other members of the CALIFORNIA CLASS, wages due, failed to accurately to record the time
13 worked, and failed to reimburse for expenses due to a systematic practice that cannot be justified,
14 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in
15 violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
16 and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
17 wrongfully withheld.

18 51. By the conduct alleged herein, DEFENDANT’S practices were also unlawful,
19 unfair and deceptive in that DEFENDANT’S employment practices caused PLAINTIFF and the
20 other members of the CALIFORNIA CLASS to be underpaid during their employment with
21 DEFENDANT.

22 52. By the conduct alleged herein, DEFENDANT’S practices were also unfair and
23 deceptive in that DEFENDANT’S uniform policies, practices and procedures failed to provide
24 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

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

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

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

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

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

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

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

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

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANT are restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**
7 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

8 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
9 **DEFENDANT)**

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

13 61. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
14 bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code
15 and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately
16 calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

19 63. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
20 commission is the minimum wage to be paid to employees, and the payment of a wage less than
21 the minimum so fixed is unlawful.

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

24 65. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
25 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
26 of time they work. As set forth herein, DEFENDANT'S uniform policy and practice was to
27 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
28 members of the CALIFORNIA LABOR SUB-CLASS.

1 66. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
3 of implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
4 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
5 pay.

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

12 68. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
14 the correct minimum wage compensation for their time worked for DEFENDANT.

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME COMPENSATION**

22 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

23 **(Alleged By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS against ALL**
24 **DEFENDANT)**

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

28 75. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code

1 and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately
2 calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the
3 CALIFORNIA LABOR SUB-CLASS and DEFENDANT'S failure to properly compensate the
4 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work
5 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

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

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

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

16 79. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
17 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
18 of overtime worked. As set forth herein, DEFENDANT'S uniform policy and practice was to
19 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
20 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, and
21 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for all
22 overtime worked.

23 80. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
24 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result
25 of implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
26 and the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
27 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
28 in any workweek.

81. In committing these violations of the California Labor Code, DEFENDANT
inaccurately calculated the amount of overtime worked and consequently underpaid the actual

1 time worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
2 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
3 benefits in violation of the California Labor Code, the Industrial Welfare Commission
4 requirements and other applicable laws and regulations.

5 82. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive
7 full compensation for all overtime worked.

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

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

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

25 86. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
26 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
27 for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR
28 SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are
presently unknown to them and which will be ascertained according to proof at trial.

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

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

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

27 **FOURTH CAUSE OF ACTION**

28 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS** **(Cal. Lab. Code §§ 226.7 & 512)**

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

90. 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.

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

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REQUIRED REST PERIODS (Cal. Lab. Code §§ 226.7 & 512)

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

94. 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.

95. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT'S managers. When DEFENDANT provided PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with rest break, they required PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members to stay on DEFENDANT'S premises for those rest breaks.

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

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

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRES EXPENSES

(Cal. Lab. Code §§ 2802)

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

98. 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.

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

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

100. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. In the course of their employment, DEFENDANT required PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members to use their personal cell phones as a result of and in furtherance of their job duties as employees for DEFENDANT. As a result, in the course of their employment with DEFENDANT the PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses and an unlawful deduction of wages which included, but were not limited to, costs related to the use of their personal cell phones. DEFENDANT'S uniform policy, practice and procedure was to cause PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members to incur personal business expenses from using DEFENDANT'S work-issued vehicles by deducting these expenses from PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members' wages. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT'S conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

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

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

7 **(Cal. Lab. Code §§ 226 and 226.2)**

8 **(Alleged by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and against all**
9 **DEFENDANT)**

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

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

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

- h. The name and address of the legal entity that is the employer; and
- i. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

104. Cal. Labor Code § 226.2 provides that an employer must furnish piece-rate employees with an “accurate itemized” statement in writing showing:

- a. The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and
- b. The total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

105. When DEFENDANT did not accurately record PLAINTIFF’ and other CALIFORNIA CLASS Members’ wages, including overtime wages, owed, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct overtime rate, the correct number of hours worked, missed meal and rest periods, owed to PLAINTIFF and other CALIFORNIA CLASS Members. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. 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.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

106. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment

1 taxes which were not properly paid to state and federal tax authorities. These damages are difficult
2 to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
3 CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period
4 in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a
5 subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the
6 time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and
7 each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

8 //

11 //

14 //

15 **EIGHTH CAUSE OF ACTION**
16 **FAILURE TO PAY WAGES WHEN DUE**
17 **(Cal. Lab. Code §§201, 202, 203)**

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

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

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

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

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

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

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

14 111. There was no definite term in PLAINTIFF’ or any CALIFORNIA LABOR SUB-
15 CLASS Members’ employment contract.

16 112. Cal. Lab. Code § 203 provides:

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

22 113. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
23 Members terminated and DEFENDANT has not tendered payment of wages, to these employees
24 who missed meal and rest breaks, as required by law. To the extent DEFENDANT tendered partial
25 payment of wages to terminated CALIFORNIA LABOR SUB-CLASS Members, that payment
26 was late.

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

1 **NINTH CAUSE OF ACTION**

2 **UNPAID SICK PAY AND FAILURE TO PROVIDE PAID SICK LEAVE BALANCE**

3 **(Cal. Lab. Code § 246, *et seq.*)**

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

6 115. 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.

9 116. Cal. Labor Code Sections 246(l)(1) mandates that “[p]aid sick time for nonexempt
10 employees shall be calculated in the same manner as the regular rate of pay for the workweek in
11 which the employee uses paid sick time, whether or not the employee actually works overtime in
12 that workweek.”

13 117. From time-to-time, during the PLAINTIFF and other members of the
14 CALIFORNIA LABOR SUB-CLASS were compensated at an hourly rate plus either non-
15 discretionary incentive pay. As a matter of law, the incentive compensation and/or piece-rate
16 compensation received by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
17 CLASS must be included in the “regular rate of pay.”

18 118. From time-to-time during the CLASS PERIOD, in those pay periods where
19 PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS earned hourly
20 compensation and either non-discretionary incentive compensation, and took paid sick time,
21 DEFENDANT failed to properly calculate the regular rate of pay for purposes of compensating
22 paid sick time by omitting non-discretionary incentive pay from the regular rate of pay.

23 119. DEFENDANT’s uniform policy and practice of omitting non-discretionary
24 incentive pay and/or piece-rate pay from the regular rate of pay for purposes of paying paid sick
25 pay, resulted in the underpayment of sick pay wages to PLAINTIFF and other members of the
26 CALIFORNIA LABOR SUB-CLASS. PLAINTIFF and other members of the CALIFORNIA
27 LABOR SUB-CLASS therefore request recovery of all unpaid wages, including sick pay wages,
28 according to proof, interest, statutory costs, as well as the assessment of any statutory penalties
against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable

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

9 120. Cal. Lab. Code § 246(i) provides that:

10 An employer shall provide an employee with written notice that sets forth the
11 amount of paid sick leave available, or paid time off leave an employer provides
12 in lieu of sick leave, for use on either the employee's itemized wage statement
13 described in Section 226 or in a separate writing provided on the designated pay
14 date with the employee's payment of wages. If an employer provides unlimited
15 paid sick leave or unlimited paid time off to an employee, the employer may satisfy
16 this section by indicating on the notice or the employee's itemized wage statement
17 "unlimited."

18 121. From time to time, DEFENDANT failed to furnish PLAINTIFF and other
19 members of the CALIFORNIA LABOR SUB-CLASS with written wage statements setting forth
20 the amount of paid sick leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.*
21 As a result, PLAINTIFF and other members of the CALIFORNIA LABOR-SUBCLASS are
22 entitled to seek and recover statutory costs.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, PLAINTIFF pray for a judgment against each DEFENDANT, jointly and
25 severally, as follows:

26 1. On behalf of the CALIFORNIA CLASS:

- 27 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
28 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining
DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANT to pay all wages and all sums unlawfully

1 withheld from compensation due to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS; and

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

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

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

10 b. Compensatory damages, according to proof at trial, including compensatory
11 damages for minimum wages, overtime wages, unreimbursed expenses, and other
12 compensation due to PLAINTIFF and the other members of the CALIFORNIA
13 LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-
14 CLASS PERIOD plus interest thereon at the statutory rate;

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

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

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

25 f. The statutory damages and an award of costs for violation of Cal. Lab. Code § 246.

26 3. On all claims:

27 a. An award of interest, including prejudgment interest at the legal rate;

28 b. Such other and further relief as the Court deems just and equitable; and

c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, §1194 and/or §1197.

DATED: _____, 2021

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs

DEMAND FOR A JURY TRIAL

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

DATED: _____, 2021

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for Plaintiffs

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:

RPM Foods, Inc.
40 Reza Nadei
4335 Van Nuys Blvd, 102
Sherman Oaks, CA 91403



9590 9402 6589 1028 8493 45

2. Article Number (Transfer from service label)

7021 0350 0001 8165 1668

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

Hurrell

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

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lail 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:

RPM Juice, Inc.
c/o Reza Moalei
4335 Van Nuys Blvd, 102
Sherman Oaks, CA 91403



9590 9402 6589 1028 8493 52

2. Article Number (Transfer from service label)

7021 0350 0001 8165 1651

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

Hurreli

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

EXHIBIT 4

Zakay Law Group, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Fax: (858) 404-9203

1. Firm Practice Areas:

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, PAGA Litigation.

2. Attorney Shani O. Zakay Biography:

• **PRACITCE AREAS**

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, Civil Litigation, Business Litigation, Corporate/Business General Counsel Advice.

• **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

State of California (all courts)

United States District Court for the District of California (all courts)

• **PROFESSIONAL EXPERIENCE**

ZAKAY LAW GROUP, APLC, San Diego, CA
Founder, April 2018

SILLDORF LAW, LLP, San Diego, CA (now known as Berding & Weil)
Partner, January 2012 – March 2018

• **EDUCATION**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA

Juris Doctor, *magma cum laude*, April 2011

Honors: Dean's List: Spring 2009, Fall 2009, Spring 2010, Fall 2010, Spring 2011.

Academic Achievement Awards: Advanced Legal Research, Constitutional Law II, Criminal Procedure, Insurance Law & Litigation, Law Office Technologies, Property II, Products Liability, Trusts & Estates.

Activities: Associate Editor, *California Western Law Review*
Legal Skills Honor Instructor for Professor Leslie Culver
Vice President, Jewish Student Union

SAN DIEGO STATE UNIVERSITY, San Diego, CA

Bachelor of Science, Business Administration, Management, *cum laude*, May 2008

Honors: Dean's List: Spring 2007 and Fall 2007

- **COMMUNITY SERVICE**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA
Spring 2016, 2018
Moot Court Judge

COMMUNITY LAW PROJECT, San Diego, CA
October 2018 – Present
Volunteer Attorney on Employment Matters

3. Attorney Jackland K. Hom Biography:

- **PRACTICE AREAS**

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, PAGA Litigation.

- **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

State of California (all courts)
United States District Courts of California (all courts)

- **PROFESSIONAL EXPERIENCE**

ZAKAY LAW GROUP, APLC, San Diego, CA
Associate, January 2021 - present

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP, San Diego, CA
Associate, November 2019 – September 2020

- **EDUCATION**

CALIFORNIA WESTERN SCHOOL OF LAW, San Diego, CA
Juris Doctor, April 2019

Honors: Dean's List: Fall 2017, Spring 2018.

Academic Achievement Awards: Advanced Prosecution Function.

Activities: Senior Editor, *California Western Law Review*
President, Asian Pacific American Law Students Association

UNIVERSITY OF CALIFORNIA, RIVERSIDE, Riverside, CA
Bachelor of Arts: Political Science, English Literature, June 2015
Honors: Dean's List

4. **Attorney Julieann Alvarado Biography:**

- **PRACTICE AREAS**

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, PAGA Litigation.

- **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

State of California (all courts)

- **PROFESSIONAL EXPERIENCE**

ZAKAY LAW GROUP, APLC, San Diego, CA

Associate, January 2022 – present

GOMEZ TRIAL ATTORNEYS, San Diego, CA

Trial Attorney, January 2021 – December 2021

- **EDUCATION**

UNIVERSITY OF SAN DIEGO SCHOOL OF LAW, San Diego, CA

Juris Doctor, *cum laude*, May 2020

Honors: Dean's Honor Scholarship Recipient (Renewed as 2L and 3L)

CALI Excellence for the Future Award: Legal Writing and Research I

Activities: President of External Affairs, Consumer Attorneys of USD

Competing Member, USD National Mock Trial Team

UNIVERSITY OF SOUTHERN CALIFORNIA, Los Angeles, CA

Bachelor of Arts: Psychology, *magna cum laude*, May 2017

Honors: Presidential Scholarship Recipient

Dean's List: Spring 2015-Spring 2017

5. **Attorney Jaclyn Joyce Biography:**

- **PRACTICE AREAS**

Employment Litigation, Employment Class Action, Wage and Hour Class Actions, PAGA Litigation.

- **BAR ADMISSIONS, MEMBERSHIPS & BOARDS**

State of California (all courts)

- **PROFESSIONAL EXPERIENCE**

ZAKAY LAW GROUP, APLC, San Diego, CA

Associate, March 2023 – present

LIGHTGABLER, Camarillo, CA

Attorney, April 2019 – February 2023

WESTON & McELVAIN (now called Weston & Agness LLP), Los Angeles, CA
Attorney, June 2016 – April 2019

- **EDUCATION**

UCLA SCHOOL OF LAW, Los Angeles, CA

Juris Doctor, *May 2012*

NORTHWESTERN UNIVERSITY, Chicago, IL

Bachelor of Arts: Political Science; Bachelor of Arts: Psychology, 2005

6. Lead Counsel – Class Action & Representative Cases:

1. Hubscher v. Bodyspirit, LLC

Court	San Diego
Case No.	37-2016-00021261-CU-OE-CTL
Nature	Independent Contractor Misclassification
Status	Settled

2. Henry v. InMotion Entertainment Group, LLC

Court	San Francisco
Case No.	CGC-18-565643
Nature	Meal/Rest Break claims and overtime and regular rate claims
Status	Settled

3. Moore v. Zirx Transportation

Court	San Francisco
Case No.	CGC-18-566655
Nature	Independent Contractor Misclassification
Status	Settled

4. Pasallo v. GSG Protective Services

Court	San Diego
Case No.	37-2018-00037611-CU-OE-CTL
Nature	Meal/Rest Break claims
Status	Settled

5. Villaroman v. C.C.H.C.

Court	Orange County
Case No.	30-2018-01013128-CU-OE-CXC
Nature	Meal/Rest Break claims
Status	Settled

6. Flores v. Plastic Express

Court	Los Angeles
Case No.	BC719071
Nature	Meal/Rest Break and minimum wage claims
Status	Settled

7. Tressler v. Spoonful Management

Court	Los Angeles
Case No.	BC719405
Nature	Meal/Rest Break claims
Status	Settled

8. Leymaster v. Toms Sierra Company, Inc.

Court	Placer
Case No.	SCV0041735
Nature	Meal/Rest Break claims and overtime and regular rate claims
Status	Settled

9. Murphy v. Rockler Retailer Group, Inc.

Court	Sacramento
Case No.	34-2018-00241374
Nature	Overtime and regular rate claims and wrongful termination
Status	Settled

10. Bruemmer v. Tempur Retail Stores, LLC.

Court	Marin
Case No.	CIV1803646
Nature	Overtime and regular rate claims and wrongful termination
Status	Settled

11. Christina Cummings v. G6 Hospitality, LLC

Court	San Diego
Case No.	37-2018-00056207-CU-OE-CTL 19CV122 GPC LL
Nature	Overtime and Minimum Wage claims and Meal and Rest Breaks
Status	Settled

12. Nicolai Laguatan v. Prevent LSS

Court	San Diego
Case No.	37-2018-00057434-CU-OE-CTL
Nature	Overtime and Minimum Wage claims and Meal and Rest Breaks
Status	Settled

13. Lisa Ramirez v. Carefusion Resources, LLC

Court	San Diego
Case No.	37-2018-00058078-CU-OE-CTL 3:18-CV-02852-BEN-MSB
Nature	Overtime and Meal and Rest Breaks
Status	Settled

14. Charles Ornelas v. C&A Transportation Services

Court	San Diego
Case No.	37-2018-00061289-CU-OE-CTL
Nature	Minimum Wage and Meal/Rest Break claims
Status	Settled

15. Luz Marin v. California Marine Cleaning

Court	San Diego
Case No.	37-2018-00063483-CU-OE-CTL
Nature	Meal Break claims
Status	Settled

16. Christian Van Cleave v. Sunrise Senior Living Management

Court	San Diego
Case No.	37-2018-00061960-CU-OE-CTL 19CV0044BEN NLS
Nature	Regular rate and meal premium miscalculation
Status	Settled

17. Heather McIntyre v. JRR Enterprises

Court	Sacramento
Case No.	34-2019-00251220
Nature	Overtime and Meal and Rest Periods
Status	Settled

18. Lori Phipps v. Soapy Joe's

Court	San Diego
Case No.	37-2019-00017673-CU-OE-CTL
Nature	Tip Polling and Meal and Rest Periods
Status	Settled

19. Heather Broughton v. NFG San Francisco, LLC

Court	San Francisco
Case No.	CGC-19-574657

Nature	Meal and Rest Breaks
Status	Settled

20. Marcos Antonios v. Interface Rehab, LLC

Court	Orange County
Case No.	30-2019-01067547-CU-OE-CXC
Nature	Meal and Rest Breaks and Reporting Time Violations
Status	Settled

21. Tiffany Rodriguez v. Circle K

Court	Riverside
Case No.	RIC 1901407 5:19-cv-00469
Nature	Overtime Wage and Meal/Rest Break claims
Status	Settled

22. Derik Scott et al. v. Ultimate Performance

Court	Los Angeles
Case No.	19STCV22823
Nature	Piece Rate Pay violations
Status	Settled

23. Raymond Frazier v. Asa Carlton

Court	San Diego
Case No.	37-2019-00036147-CU-OE-CTL
Nature	Overtime Wages
Status	Settled

24. John Moreno v. Da Kitchen

Court	San Diego
Case No.	37-2019-00024885-CU-OE-CTL
Nature	Overtime Wage and Meal/Rest Break claims
Status	Settled

25. Penny Lane v. International Aero Clubs, LLC

Court	San Diego
Case No.	37-2019-00021793-CU-OE-CTL
Nature	Meal and Rest Breaks and Regular Rate Miscalculation
Status	Settled

26. Amber Price v. DMSD Restaurants

Court	San Diego
Case No.	37-2019-00024062-CU-OE-CTL
Nature	Meal and Rest Break violations
Status	Settled

27. Jamaal Johnson v. Volt Management Corp

Court	Los Angeles
Case No.	19STCV16466
Nature	On Duty Meal Break violations
Status	Settled

28. Ezzat Menias v. All American Private Security

Court	Orange County
Case No.	30-2019-01085120-CU-OE-CXC
Nature	On Duty Meal Break violations
Status	Settled

29. Mark Connor v. Ascendant Marketing

Court	San Diego
Case No.	37-2019-00026864-CU-OE-CTL
Nature	Minimum Wage violations
Status	Settled

30. Niki Nunez v. Home Depot

Court	San Joaquin
Case No.	STK-CV-406-2019-6656
Nature	Overtime Wages violations
Status	In Litigation

31. Alma Salazar v. Frontier Toyota

Court	Los Angeles
Case No.	19STCV20382
Nature	Rest Break violations
Status	Settled

32. Josefina Garces v. Kar Auction Services

Court	Los Angeles
Case No.	19STCV28489
Nature	Rest Break violations
Status	Settled

33. Madison Weiss v. Niznik Behavior

Court	San Diego
Case No.	37-2019-00039441-CU-OE-CTL
Nature	Meal and Rest Break violations
Status	Settled

34. Jimmy Mack v. ERM Enterprises

Court	Sacramento
Case No.	2019-00262259
Nature	Meal and Rest Break violations
Status	Settled

35. Josefina Garces v. DriverDo

Court	Los Angeles
Case No.	19STCV32773
Nature	Independent Contractor Misclassification
Status	In Litigation

36. Perseus Porras v. Tantalum Restaurant

Court	Los Angeles
Case No.	19STCV31015
Nature	Unpaid Wages + Missed Meal/Rest Breaks
Status	Settled

37. Dorcena Deutsch v. Scripps

Court	San Diego
Case No.	37-2019-00036333-CU-OE-CTL
Nature	Regular Rate Miscalculation for Nurses
Status	Settled

38. Josalyn O'Quinn v. Laugh Factory

Court	Los Angeles
Case No.	19STCV28155
Nature	Regular Rate Miscalculation, Wage Theft
Status	In Litigation

39. Nicholas Leon v. Miller Event Management

Court	San Luis Obispo
Case No.	19CV-0435
Nature	Meal/Rest Breaks, Reporting Time, 2802
Status	Settled

40. Aaris Watts v. TRL Systems

Court	Orange County
Case No.	30-2019-01102457-CU-OE-CXC
Nature	Meal/Rest Breaks, Reporting Time
Status	Settled

41. Faith Smith v. Island Pizza

Court	Contra Costa
Case No.	MSC19-01654
Nature	Meal/Rest Breaks, 226, 2802
Status	Settled

42. Johnathan Roa v. Otay Mesa Sales

Court	San Diego
Case No.	37-2019-00057735-CU-OE-CTL
Nature	Meal/Rest Breaks, 226
Status	Settled

43. Sabrina Ivon v. Sinclair Television of California

Court	Humboldt
Case No.	DR190699
Nature	Vaquero
Status	Settled

44. Jonathan Mitchell v. Mack Trucking

Court	San Bernardino
Case No.	CIVDS1928334
Nature	Independent Contractor Misclassification

Status	In Litigation
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45. Curtis Edwards v. Resolve Group

Court	San Francisco
Case No.	CGC-19-579095
Nature	Meal & Rest Breaks + 2802
Status	In Litigation

46. Elena Kiseleva v. TotalMed Staffing, Inc

Court	Santa Clara
Case No.	19CV354635
Nature	Overtime + Meal and Rest Breaks
Status	Settled

47. Richard Jer Vang v. Bridge Property Management

Court	Alameda
Judge	Winfred Smith
Nature	Off the clock work, regular rate miscalc.
Status	Settled

48. Madison Marrero v. Stat Med

Court	Alameda
Case No.	HG19043214
Nature	Unpaid Overtime + Meal/Rest Breaks
Status	In Litigation

49. Brian Reyes v. Stowasser Buick-GMC

Court	Santa Barbara
Case No.	19CV06183
Nature	Vaquero
Status	Settled

50. Erik Foss v. Anderson Hospitality, Inc.

Court	Shasta
Case No.	195317
OPC	Wood Smith – Andrew Kleiner
Nature	Meal and Rest Breaks, Regular Rate
Status	In Litigation

51. Griselda Duran v. EmployBridge

Court	Kern
Case No.	BCV-20-101583
Nature	Regular Rate, 226

Status	In Litigation
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52. Luis Rendon v. Healthcare Investments, Inc.

Court	Los Angeles
Case No.	20STCV39775
Nature	Meal and Rest Breaks
Status	In Litigation

53. Richard Melead v. TVI, Inc.

Court	Orange
Case No.	30-2020-01140887-CU-OE-CXC
Nature	Regular Rate, 226 (Magadia)
Status	Settled

54. David Spencer v. Asset Gas, Inc.

Court	San Diego
Case No.	37-2020-00024642-CU-OE-CTL
Nature	Meal and Rest Breaks
Status	Settled

55. Thomas Haven v. California Vocations, Inc.

Court	Butte
Case No.	20CV01514
Nature	Regular Rate + Meal and Rest Breaks
Status	In Litigation

56. Estefania Renteria v. Love's Country

Court	Kern
Case No.	BCV-20-101260
Nature	226
Status	In Litigation

57. Rachel Latin v. OneMain General Services Corp.

Court	Stanislaus
Case No.	CV-20-002498
Nature	Dart + Magadia
Status	In Litigation

58. Kalaina Dula v. 2 Kings Gaming, Inc.

Court	Merced
Case No.	#20CV-02289
Nature	Meal and Rest Breaks
Status	In Litigation

59. Jie Xu v. HT Multinational

Court	San Bernardino
Case No.	CIV-DS2015679
Nature	Exempt Misclassification
Status	In Litigation

60. Yvette Molina v. Hawaiian Airlines

Court	Los Angeles
Case No.	20STCV28079
Nature	Meal and Rest + Magadia
Status	In Litigation

61. Reinald Pillsbury v. T & T Restaurants CA

Court	Del Norte
Case No.	CVUJ-2020-1214
Nature	Meal/Rest Breaks + Regular Rate
Status	Settled

62. Luis de Jesus v. Guardian Angel Home Care

Court	San Diego
Case No.	37-2020-00021049-CU-OE-CTL
Nature	Piece-Rate
Status	In Litigation

63. Charles Sandlin v. Secure Nursing Services, Inc.

Court	Los Angeles
Case No.	20STCV25675
Nature	Regular Rate
Status	Settled

64. Gabriel Mendez v. Bondz, Inc.

Court	San Joaquin
Case No.	STK-CV-UOE-2020-0007486
Nature	Piece-Rate
Status	In Litigation

65. James Conley v. Siskiyou Forest Products

Court	Shasta
Case No.	195819
Nature	Regular Rate and Meal/Rest Breaks + 226
Status	In Litigation

66. Alex Castellanos v. Southwest Patrol

Court	San Diego
Case No.	37-2020-00024905-CU-OE-CTL
Nature	Augutus
Status	Settled

67. Damien Hampton v. Pegasus Investors

Court	Sacramento
Case No.	34-2020-00281394-CU-BT-GDS
Nature	Unlawful Housing
Status	In Litigation

68. Tamara Perkins v. FSEI

Court	Sacramento
Case No.	34-2020-00287054
Nature	Regular Rate
Status	Settled

69. Rodney Stovall v. Javelin Logistics Company

Court	Alameda
Case No.	RG20075705
Nature	Meal / Rest Breaks
Status	In Litigation

70. Gabrielle Boyd v. Bluestone Lane Holdings, LLC

Court	San Francisco
Case No.	CGC-20-585787
Nature	Tip Pooling ; Magadia
Status	Settled

71. Elias Kaser v. Aviation Consultants, Inc.

Court	Orange County
Case No.	
Nature	Meal / Rest Breaks, Regular Rate
Status	Settled

72. Christopher Chacon v. Panda Motors, Inc.

Court	San Bernardino
Case No.	CIV DS2022220
Nature	Regular Rate
Status	In Litigation

73. Willie Lang v. Pathways

Court	San Diego
Case No.	37-2019-00049969
Nature	Off the Clock
Status	In Litigation

74. Norma Reyes v. Simpson Garden Grove, Inc.

Court	Orange
Case No.	30-2020-0117564-CU-OE-CJC
Nature	Meal / Rest Breaks
Status	Settled

75. Daniel Jacobs v. Rush Media Company

Court	Los Angeles
Case No.	20STCV32350
Nature	Independent Contractor Misclassification
Status	Litigation

76. Luis Ledesma v. TVJ Sons I, Inc.

Court	Santa Barbara
Case No.	20CV03573
Nature	Vaquero
Status	Settled

77. Kevin Cianfarani v. Career Strategies Temporary, Inc. (MPI)

Court	Los Angeles
Case No.	
Nature	Off the clock work
Status	Settled

78. Hector Avitia v. LAZ Parking

Court	San Diego
Case No	37-2020-00030133-CU-OE-CTL
Nature	Magadia + Augustus
Status	Litigation

79. Sukhraj Kaur v. ACES 2020, LLC

Court	Contra Costa
Case No.	C20-02482
Nature	Meal/Rest Breaks, 2802
Status	Litigation

80. Boaventura v. Rei Do Gado

Court	Contra Costa
Case No.	37-2020-00032342-CU-OE-CTL
Nature	Meal/Rest Breaks, 2802
Status	Litigation

81. James Rachal v. ELG Metals, Inc.

Court	Los Angeles
Case No.	20STCV45861
Nature	Meal/Rest Breaks, Regular Rate
Status	Litigation

82. Evelyn Nwansi v. Princeton Healthcare Center, LLC

Court	Alameda
Case No.	RG20083664
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	Litigation

83. Michael Ashlock v. Advantis Medical Staffing

Court	San Diego
Case No.	37-2020-00022305-CU-OE-CTL
Nature	Regular Rate
Status	Settled

84. Moe Popal v. Ameriprise Auto & Home Insurance

Court	Riverside
Case No.	RIC2000006
Nature	Exempt/Non-Exempt Misclassification
Status	Settled

85. Mark Williams v. Web to Door

Court	San Francisco
Case No.	CGC-20-588382
Nature	Meal and Rest Break + Regular Rate
Status	Litigation

86. Jessica Barackman v. Teaz N Pleaz, Inc.

Court	El Dorado
Case No.	SC20200179
Nature	Meal/Rest Breaks, Seating
Status	Settled

87. Nicolas Neutall v. Urban Alchemy

Court	San Francisco
Case No.	CGC-20-588622
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

88. Courteney Arneson v. Bahn Thai, Inc.

Court	Sacramento
Case No.	34-2021-00295429
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	Settled

89. Carlos Cortez v. M & M Automotive Group, LLC.

Court	Alameda
Case No.	HG21086853
Nature	Violation of PAGA
Status	In Litigation

90. Christian Soltero v. Summit Pizza West, LLC

Court	San Diego
Case No.	37-2021-00001288-CU-OE-CTL
Nature	Meal/Rest Breaks, 2698
Status	Settled

91. Traci Pollinger v. Hoehn Motors, Inc.

Court	San Diego
Case No.	37-2021-00003888-CU-OE-CTL
Nature	Violation of PAGA
Status	In Litigation

92. Mohammad Alavicheh v. Suburban Buick GMC Cadillac, LLC

Court	Orange
Case No.	30-2021-01181315-CU-OE-CXC
Nature	Violation of PAGA
Status	In Litigation

93. Shasta Collins v. Hilton Management, LLC

Court	San Francisco
Case No.	CGC-21-590959
Nature	Violation of PAGA
Status	In Litigation

94. Amanda Hernandez v. Parenting Network, Inc.

Court	Tulare
Case No.	VCU287027
Nature	Meal/Rest Breaks, PAGA
Status	In Litigation

95. Richard Sanchez v. Salinas Lincoln Mercury, Inc.

Court	Monterey
Case No.	21CV001535
Nature	Violation of PAGA
Status	In Litigation

96. Doretha Jackson v. White Fir Holdings, LLC dba Midtown Oaks Post-Acute

Court	Sacramento
Case No.	34-2021-00301656
Nature	Meal/Rest Breaks, PAGA
Status	In Litigation

97. Gabriel Guzman Jr. v. Vulcan Materials Company

Court	San Diego
Case No.	30-2021-00052064-CU-OE-CTL
Nature	Violation of PAGA
Status	In Litigation

98. Pedro Rodriguez v. R.M. Parks Place, Inc.

Court	San Joaquin
Case No.	STK-CV-UOE-2021-0006050
Nature	Meal/Rest Breaks, PAGA
Status	In Litigation

99. Michael Harrington v. Genesis Private Security, Inc.

Court	Alameda
Case No.	RG21105476
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

100. David Ezell v. Diab Leasing, Inc.

Court	Sacramento
Case No.	34-2021-00305329
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

101. Joe Moreno v. Rambo, LLC

Court	San Francisco
Case No.	CGC-21-590959
Nature	Violation of PAGA
Status	In Litigation

102. Noemy Flores v. Aven Group, Inc.

Court	Los Angeles
Case No.	21STCV36642
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

103. Bria Ware v. Shake Shack Enterprise, LLC.

Court	Alameda
Case No.	21CV002063
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

104. Latisha Anderson v. Barton Meyers Associates, Inc.

Court	Los Angeles
Case No.	21STCV43314
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	In Litigation

105. Eduardo Ybarra v. Helzberg's Diamond Shops, LLC

Court	Alameda
Case No.	21CV003531
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	In Litigation

106. Jermell Jones v. Greenlawn Funeral Homes

Court	Kern
Case No.	BCV-21-102356
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	In Litigation

107. Chanda Young v. Breakfast Republic

Court	Los Angeles
Case No.	21SMCV01447
Nature	2699, 201, 202, 203
Status	In Litigation

108. Jesus Marin v. Chipotle Services, LLC.

Court	San Diego
Case No.	37-2021-00051618
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	In Litigation

109. Daniel Rosas v. WSD Engineering, Inc.

Court	Alameda
Case No.	RG21086699
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	In Litigation

110. Isaiah Davis v. RPM Juice, Inc.

Court	San Francisco
Case No.	21STCV14755
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	In Litigation

111. Amanda Hernandez v. Parenting Network

Court	San Joaquin
Case No.	VCU287027
Nature	Meal/Rest Breaks, Wage Statement Violations, PAGA
Status	Settled

112. Christiane Hilden v. Oakwood Village, Inc.

Court	Placer
Case No.	S-CV-0046676
Nature	PAGA
Status	Settled

113. Jose Garcia v. Ferma Greenbox

Court	Alameda
Case No.	RG21101104
Nature	Unpaid Wages, PAGA
Status	Settled

114. Brittney Jones v. ASD6

Court	San Diego
Case No.	37-2021-00016864-CU-OE-CTL
Nature	PAGA
Status	Settled

115. Richard Sanchez v. Salinas Lincoln Mercury

Court	Monterey
Case No.	21CV001535
Nature	PAGA
Status	In Litigation

116. Melina Wilson v. Spreen Honda

Court	San Bernardino
Case No.	CIVSB2119857
Nature	PAGA
Status	Settled

117. Anthony Lopez v. Ferro Automotive

Court	Solano
Case No.	FCS056580
Nature	PAGA
Status	In Litigation

118. Michael Nash v. K. Hovnanian

Court	Riverside
Case No.	RIC2003319
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	In Litigation

119. Katsiaryna Karnachova v. INTO North America, Inc.

Court	San Diego
Case No.	37-2021-00023758-CU-OE-CTL
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	Settled

120. Doretha Jackson v. White Fir Holdings, LLC

Court	Sacramento
Case No.	34-2021-00301656
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	Settled

121. Emily Tolosa v. Kensington Redwood City, LLC

Court	San Mateo
Case No.	21-CIV-03030
Nature	Meal/Rest Breaks, Unlawful Rounding, Unpaid Overtime, PAGA
Status	In Litigation

122. Gabriel Guzman v. Vulcan Materials Company

Court	San Diego
Case No.	37-2021-00024583-CU-OE-CTL
Nature	Unpaid Wages, PAGA
Status	Settled

123. Cristal Rodriguez v. EAH , Inc.

Court	Santa Cruz
Case No.	21CV00884
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	Settled

124. Natalie Chrestensen v. Northeastern Rural Health Clinics

Court	Lassen
Case No.	63703
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	Settled

125. Khozama Almahdi v. Vitamin Shoppe Industries

Court	Santa Clara
Case No.	20CV365150
Nature	PAGA
Status	Settled

126. Omar Vejar v. Fineline Woodworking, Inc.

Court	Orange
Case No.	30-2021-01208607-CU-OE-CXC
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	Settled

127. Janelle Harris v. 7Cuts, LLC

Court	Contra Costa
Case No.	MSC21-01375
Nature	Meal/Rest Breaks, Wage Statement Violations, PAGA
Status	Settled

128. Claudia Nunez v. The Whole Child

Court	Los Angeles
Case No.	21STCV25160
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	In Litigation

129. Jaqueline Nayyar v. Pizza Investment Entrepreneurs, LLC

Court	Solano
Case No.	FCS056804
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	In Litigation

130. Michael Harrington v. Genesis Private Security

Court	Alameda
Case No.	RG21105476
Nature	PAGA
Status	In Litigation

131. Robert Baray v. Curation Foods

Court	Santa Barbara
Case No.	21CV2834
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	Settled

132. James Aguilar v. T & K

Court	Santa Clara
Case No.	21CV384674
Nature	Meal/Rest Breaks, Unpaid Overtime, Untimely Payment of Wages, PAGA
Status	Settled

133. Arthur Gutierrez v. Anning Company

Court	Los Angeles
Case No.	21PSCV00785
Nature	Unpaid Wages, PAGA
Status	In Litigation

134. Pedro Rodriguez v. RM Parks

Court	San Joaquin
Case No.	STK-CV-UOE-2021-0006050
Nature	Unpaid Wages, Wage Statement Violations, PAGA
Status	Settled

135. Phillip Soto v. Niki Investments

Court	Orange
Case No.	30-2021-01213064-CU-OE-CXC
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	Settled

136. David Ezell v. Diab Leasing

Court	Sacramento
Case No.	2021-305329
Nature	Meal/Rest Breaks, Unpaid Overtime, Wage Statement Violations, PAGA
Status	Settled

137. John Icabalceta v. Integrated Protection Corp.

Court	Los Angeles
Case No.	21STCV28920
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	In Litigation

138. Jose Garcia v. Pacific Shellfish Inc.

Court	San Diego
Case No.	37-2021-00021898-CU-OE-CTL
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	Settled

139. Geneva Putman v. Winco Holdings, Inc.

Court	Sacramento
Case No.	2:21-cv-01760-MCE-JDP
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	In Litigation

140. Alahjah Brown v. NRI USA, Inc.

Court	San Bernardino
Case No.	CIVSB0228407
Nature	PAGA
Status	Settled

141. Isabella Ruiz v. Tiwana & Sons, Inc.

Court	San Joaquin
Case No.	STK-CV-400-2021-6420
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	Settled

142. Tausha Griswold v. Savings Bank of Menocino County

Court	Mendocino
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Case No.	21CV00670
Nature	Wage Statement Violations, PAGA
Status	Settled

143. Dino Desanctis v. Douglas Products and Packaging Company, LLC

Court	Contra Costa
Case No.	C21-01874
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	Settled

144. Joe Moreno v. Rambo, LLC.

Court	San Diego
Case No.	37-2021-00038129-CU-OE-CTL
Nature	PAGA
Status	Settled

145. Sara Chiu v. Cornish & Carey (NewMark)

Court	Alameda
Case No.	34-2021-00295429
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	Settled

146. Norman Respass v. The Scion Group

Court	Eastern District
Case No.	2:20-cv-02307-MCE-JDP
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	Settled

147. Jalil Hasim v. The Davey Tree Expert Company

Court	San Francisco
Case No.	CGC-21-595544
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	Settled

148. Devin Terrel v. KaiserAir

Court	Alameda
Case No.	RG21113701
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	Settled

149. Michelle Lee v. Aveanna Healthcare AS, LLC

Court	Santa Clara
Case No.	21CV387081
Nature	PAGA
Status	Settled

150. Annklein Pacia v. Kilroy Realty, L.P.

Court	Los Angeles
Case No.	21STCV20624
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA, FCRA
Status	Settled

151. Lydia Wedan v. Lakeport Post Acute, LLC

Court	Lake
Case No.	CV-422113
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	Settled

152. Dante Henderson v. Bizon Group, Inc.

Court	Alameda
Case No.	HG21115170
Nature	Wage Statement Violations, Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	In Litigation

153. Noemy Flores v. Aven Group, Inc.

Court	Los Angeles
Case No.	21STCV36642
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	In Litigation

154. Alissa Whitney v. Five J's Family Enterprises

Court	San Bernardino
Case No.	CIVSB 2129063
Nature	Meal/Rest Breaks, Unpaid Overtime, Unlawful Rounding, PAGA
Status	Settled

155. Ricardo Rodriguez v. Employbridge

Court	Ventura
Case No.	56-2021-00559039-CU-OE-VTA
Nature	PAGA
Status	In Litigation

156. Amanda Patterson v. RCSH Operations, Inc.

Court	Contra Costa
Case No.	MSC21-02077
Nature	Wage Statement Violations, Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	Settled

157. Tyra Toler v. Total Testing Solutions LLC

Court	Los Angeles
Case No.	21STCV38452
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	Settled

158. Juanita Allen v. Nissan of Stockton

Court	San Joaquin
Case No.	STK-CV-UOE-2021-8956
Nature	PAGA
Status	In Litigation

159. Bria Ware v. Shake Shack

Court	Alameda
Case No.	21CV002063
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	Settled

160. Paola Villalvazo v. SK Market Inc.

Court	Los Angeles
Case No.	21STCV39911
Nature	PAGA
Status	In Litigation

161. Luke Delacruz v. Walmart (Bonobos)

Court	San Diego
Case No.	37-2021-00046421-CU-OE-CTL
Nature	Meal/Rest Breaks, Unpaid Overtime, PAGA
Status	In Litigation

162. Tanya Ripley v. Cerner Corp.

Court	Placer
Case No.	S-CV-0045961
Nature	Meal/Rest Breaks, Unpaid Overtime
Status	Settled

EXHIBIT 5