

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

MERCED COUNTY COMMUNITY ACTION BOARD, a California Domestic Nonprofit; and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

NATE BOOTHE, an individual(s), on behalf of himself and on behalf of all persons similarly situated,

By: Nengsy Moya, Deputy

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

Merced Superior Court - Civil Division

627 W. 21st Street

Merced, CA 95340

CASE NUMBER:
(Número del Caso):

22CV-01141

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

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

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

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

4/26/2022 2:54 PM

Amanda Toste

DATE:

(Fecha)

Clerk, by
(Secretario)

Deputy
(Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

[SEAL]



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ELECTRONICALLY FILED
Merced Superior Court
4/26/2022 2:54 PM
Amanda Toste
Clerk of the Superior Court
By: Nengsy Moua, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCED

NATE BOOTHE, an individual(s), on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

MERCED COUNTY COMMUNITY ACTION
BOARD, a California Domestic Nonprofit; and
DOES 1-50, Inclusive,

Defendants.

22CV-01141

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN

DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF
CALIFORNIA LABOR CODE §2802;
9) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ.]

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant MERCED COUNTY COMMUNITY ACTION BOARD (“DEFENDANT”) is a California domestic nonprofit that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Merced.

2. DEFENDANT is a nonprofit designated by the federal government to combat poverty by providing various services, including home repair, energy saving services, and utility assistance in Merced County, in the State of California, where PLAINTIFF worked.

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

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

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

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

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

17 7. PLAINTIFF was employed by DEFENDANT in California from May of 2015 to
18 January of 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid
19 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
20 minimum and overtime wages due for all time worked.

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

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

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

7 **A. Meal Period Violations**

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

25 16. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
26 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
27 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
28 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and

1 other CALIFORNIA CLASS Members were required from time to time to perform work as
2 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
3 meal break. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS
4 Members does not qualify for limited and narrowly construed “on-duty” meal period exception.
5 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS
6 Members were, from time to time, required to remain on duty, and on call. Further, from time to
7 time, PLAINTIFF and other CALIFORNIA CLASS Members were required to remain on duty,
8 on call, and/or on the premises, and/or to carry cordless communication devices and respond to
9 communications received on said devices during what was supposed to be their off-duty meal
10 periods. PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks
11 without additional compensation and in accordance with DEFENDANTS’ strict corporate policy
12 and practice.

13 **B. Rest Period Violations**

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

1 and DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS
2 Members were from time to time denied their proper rest periods by DEFENDANTS and
3 DEFENDANTS' managers.

4 **C. Unlawful Rounding Violations**

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

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

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1 **D. Unreimbursed Business Expenses**

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

13 21. In the course of their employment, DEFENDANTS from time to time required
14 PLAINTIFF and other CALIFORNIA CLASS Members to use their personal cell phone to
15 correspond and coordinate tasks with other employees as a result of and in furtherance of their
16 job duties as employees for DEFENDANT. But for the use of their own personal cell phones,
17 PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential job
18 duties, including but not limited to sending and receiving work-related communications from
19 DEFENDANTS. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and
20 other CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in
21 the course of their employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA
22 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related
23 to the use of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

24 **E. Wage Statement Violations**

25 22. California Labor Code Section 226 requires an employer to furnish its employees
26 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
27 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
28 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name

1 of the employee and only the last four digits of the employee’s social security number or an
2 employee identification number other than a social security number, (8) the name and address of
3 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
4 period and the corresponding number of hours worked at each hourly rate by the employee.

5 23. From time to time during the CLASS PERIOD, when PLAINTIFF and other
6 CALIFORNIA CLASS Members missed meal and rest breaks, or were not paid for all hours
7 worked, DEFENDANTS failed to provide PLAINTIFF and other CALIFORNIA CLASS
8 Members with complete and accurate wage statements that include, among other things, all
9 applicable hourly rates in effect during the pay period and the corresponding amount of time
10 worked at each hourly rate. Further, from time to time, DEFENDANTS failed to issue wage
11 statements that provided the accurate name and address of the legal entity that is the employer of
12 PLAINTIFF and other CALIFORNIA CLASS Members. Additionally, from time to time,
13 DEFENDANTS issued wage statements to PLAINTIFF and other CALIFORNIA CLASS
14 Members that included “Vacation” and “Holiday” hours into the computation of total hours
15 worked for purposes of Cal. Lab. Code § 226(a)(2). However, “Vacation” and “Holiday” hours
16 are not considered hours worked. Accordingly, DEFENDANTS from time to time issued wage
17 statements to PLAINTIFF and other CALIFORNIA CLASS Members that violated Cal. Lab.
18 Code § 226(a)(2).

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

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

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

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

5 27. During the CLASS PERIOD, from time-to-time DEFENDANTS required
6 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work pre-shift, post-
7 shift, and during a scheduled meal break while off the clock. This resulted in PLAINTIFF and
8 other members of the CALIFORNIA CLASS having to work while off-the-clock.

9 28. DEFENDANTS directed and directly benefited from the uncompensated off-the-
10 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

11 29. DEFENDANTS controlled the work schedules, duties, protocols, applications,
12 assignments, and employment conditions of PLAINTIFF and the other members of the
13 CALIFORNIA CLASS.

14 30. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
15 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS from time to
16 time failed to document, track, or pay PLAINTIFF and the other members of the CALIFORNIA
17 CLASS all wages earned and owed for all the work they performed, including pre-shift, post-
18 shift, and during meal period off-the-clock work.

19 31. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
20 exempt employees, subject to the requirements of the California Labor Code.

21 32. DEFENDANTS' policies and practices from time to time deprived PLAINTIFF
22 and the other members of the CALIFORNIA CLASS of all minimum, regular, overtime, and
23 double time wages owed for the off-the-clock work activities. Because PLAINTIFF and the other
24 members of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more
25 than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of
26 overtime pay.

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

1 34. As a result, from time to time, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS forfeited wages due them for all hours worked at DEFENDANTS'
3 direction, control and benefit for the time spent performing work before and after shifts, receiving
4 and responding to work-related communications on personal cell phones outside of their
5 scheduled shifts and working while clocked out for meal periods. DEFENDANTS' uniform
6 policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages
7 for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
8 records.

9 **G. Regular Rate Violation- Overtime, Double Time, Meal and Rest Period Premiums, and**
10 **Sick Pay**

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

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

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

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

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

1 profit and gain an unfair advantage over competitors who complied with the law. To the extent
2 equitable tolling operates to toll claims by the CALIFORNIA CLASS members against
3 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

4 **H. Unlawful Deductions**

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

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

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1 **I. CLASS ACTION ALLEGATIONS**

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

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

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

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

- 23 a. Whether DEFENDANTS maintained legally compliant meal period policies and
24 practices;
25 b. Whether DEFENDANTS maintained legally compliant rest period policies and
26 practices;
27 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
28 CLASS Members accurate premium payments for missed meal and rest periods;

- 1 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
- 2 CLASS Members accurate overtime and double time wages;
- 3 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
- 4 CLASS Members at least minimum wage for all hours worked;
- 5 f. Whether DEFENDANTS failed to compensate PLAINTIFF and the
- 6 CALIFORNIA CLASS Members for required business expenses;
- 7 g. Whether DEFENDANTS unlawfully deducted earned wages from PLAINTIFF
- 8 and the CALIFORNIA CLASS Members’ pay;
- 9 h. Whether DEFENDANTS issued legally compliant wage statements;
- 10 i. Whether DEFENDANTS committed an act of unfair competition by
- 11 systematically failing to record and pay PLAINTIFF and the other members of the
- 12 CALIFORNIA CLASS for all time worked;
- 13 j. Whether DEFENDANTS committed an act of unfair competition by
- 14 systematically failing to record all meal and rest breaks missed by PLAINTIFF
- 15 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed
- 16 the benefit of this work, required employees to perform this work and permits or
- 17 suffers to permit this work;
- 18 k. Whether DEFENDANTS committed an act of unfair competition in violation of
- 19 the UCL, by failing to provide the PLAINTIFF and the other members of the
- 20 CALIFORNIA CLASS with the legally required meal and rest periods.
- 21 46. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
- 22 a result of DEFENDANTS’ conduct and actions alleged herein.
- 23 47. PLAINTIFF’s claims are typical of the claims of the class, and PLAINTIFF has
- 24 the same interests as the other members of the class.
- 25 48. PLAINTIFF will fairly and adequately represent and protect the interests of the
- 26 CALIFORNIA CLASS Members.
- 27 49. PLAINTIFF retained able class counsel with extensive experience in class action
- 28 litigation.

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

3 51. There is a strong community of interest among PLAINTIFF and the members of
4 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
5 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
6 sustained.

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

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

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

21 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
22 which would as a practical matter be dispositive of the interests of the other
23 members not party to the adjudication or substantially impair or impeded their
24 ability to protect their interests.

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

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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SECOND CAUSE OF ACTION

Failure To Pay Minimum Wages

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

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

70. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

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

23 85. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
24 for DEFENDANT's willful and intentional violations of the California Labor Code and the
25 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
26 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
27 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(Cal. Lab. Code §§ 226.7 & 512)

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

100. 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.

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

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

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

4 **FIFTH CAUSE OF ACTION**

5 **Failure To Provide Required Rest Periods**

6 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

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

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

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

4 **SIXTH CAUSE OF ACTION**

5 **Failure To Provide Accurate Itemized Statements**

6 **(Cal. Lab. Code §§ 226)**

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

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

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

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

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

3 110. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA
4 CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest
5 period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide
6 PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage
7 statements which failed to show, among other things, the total hours worked and all applicable
8 hourly rates in effect during the pay period and the corresponding amount of time worked at each
9 hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods. Further,
10 from time to time, DEFENDANTS failed to issue wage statements that provided the accurate
11 name and address of the legal entity that is the employer of PLAINTIFF and other CALIFORNIA
12 CLASS Members. Additionally, from time to time, DEFENDANTS issued wage statements to
13 PLAINTIFF and other CALIFORNIA CLASS Members that included “Vacation” and “Holiday”
14 hours into the computation of total hours worked for purposes of Cal. Lab. Code § 226(a)(2).
15 However, “Vacation” and “Holiday” hours are not considered hours worked. Accordingly,
16 DEFENDANTS from time to time issued wage statements to PLAINTIFF and other
17 CALIFORNIA CLASS Members that violated Cal. Lab. Code § 226(a)(2).

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

21 112. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
22 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
23 CLASS. These damages include, but are not limited to, costs expended calculating the correct
24 wages for all missed meal and rest breaks and the amount of employment taxes which were not
25 properly paid to state and federal tax authorities. These damages are difficult to estimate.
26 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
27 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
28 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period

1 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
2 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
3 of the CALIFORNIA CLASS herein).

4 **SEVENTH CAUSE OF ACTION**

5 **Failure To Pay Wages When Due**

6 **(Cal. Lab. Code §§ 203)**

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

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

11 114. Cal. Lab. Code § 200 provides that:

12 As used in this article:

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

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

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

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

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

118. Cal. Lab. Code § 203 provides:

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

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

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

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees For Required Expenses

(Cal. Lab. Code §§ 2802)

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

121. 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.

122. 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

123. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using their personal cellular phone all on behalf of and for the benefit of DEFENDANTS.

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

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

16 **NINTH CAUSE OF ACTION**
17 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**
18 **(Cal. Lab. Code §§2698 et seq.)**
19 **(Alleged by PLAINTIFF against all Defendants)**

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

22 126. PAGA is a mechanism by which the State of California itself can enforce state labor
23 laws through the employee suing under the PAGA who does so as the proxy or agent of the state's
24 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
25 a law enforcement action designed to protect the public and not to benefit private parties. The
26 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
27 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
28 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as

1 private attorneys general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch.
2 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

3 127. PLAINTIFF, and such persons that may be added from time to time who satisfy the
4 requirements and exhaust the administrative procedures under the Private Attorney General Act,
5 bring this Representative Action on behalf of the State of California with respect to themselves and
6 all individuals who are or previously were employed by DEFENDANT and classified as non-
7 exempt employees in California during the time period of February 16, 2021 until the present (the
8 "AGGRIEVED EMPLOYEES").

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

17 129. The policies, acts and practices heretofore described were and are an unlawful
18 business act or practice because DEFENDANTS (a) failed to properly record and pay PLAINTIFF
19 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime
20 hours in violation of the Wage Order, (b) failed to provide accurate itemized wage statements, (c)
21 failed to provide mandatory meal breaks and rest breaks, (d) failed to pay meal and rest break
22 premiums, (e) failed to timely pay wages at the correct rate, and (f) engaged in unlawful deductions,
23 all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but
24 not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3,
25 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804,
26 and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result
27 of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor
28 Code Private Attorney General Act of 2004 as the representative of the State of California for the
illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

15 2. On behalf of the CALIFORNIA CLASS:

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

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violation of Cal. Lab. Code § 226

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

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

4. On all claims:

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

DATED: April 26, 2022

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: April 26, 2022

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorney for PLAINTIFF

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client # 46401

February 16, 2022

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

MERCED COUNTY COMMUNITY ACTION BOARD

c/o BRENDA JOY CALLAHAN-JOHNSON

1235 W Main Street

Merced, CA 95340

Sent via Certified Mail and Return Receipt No. 7021 2720 0000 9972 6594

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff NATE BOOTHE ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant MERCED COUNTY COMMUNITY ACTION BOARD, a California Domestic Nonprofit ("Defendant"). Plaintiff was employed by Defendant in California from May of 2015 to January of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for wages when due.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendant's conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

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

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

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

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

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

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

Sincerely,



Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

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Attorneys for Plaintiff NATE BOOTHE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCED

NATE BOOTHE, an individual(s), on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

MERCED COUNTY COMMUNITY ACTION
BOARD, a California Domestic Nonprofit; and
DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; and
- 2) VIOLATION OF GOVT. CODE § 12940 – RELIGIOUS DISCRIMINATION
- 3) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 4) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 5) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 6) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 7) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND

THE APPLICABLE IWC WAGE ORDER;
 8) FAILURE TO PROVIDE ACCURATE
 ITEMIZED STATEMENTS IN
 VIOLATION OF CAL. LAB. CODE § 226;
 9) FAILURE TO PROVIDE WAGES WHEN
 DUE IN VIOLATION OF CAL. LAB.
 CODE §§ 201, 202 AND 203;
 10) FAILURE TO REIMBURSE
 EMPLOYEES FOR REQUIRED
 EXPENSES IN VIOLATION OF
 CALIFORNIA LABOR CODE §2802.

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant MERCED COUNTY COMMUNITY ACTION BOARD (“DEFENDANT”) is a California domestic nonprofit that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Merced.

2. DEFENDANT is a nonprofit designated by the federal government to combat poverty by providing various services, including home repair, energy saving services, and utility assistance in Merced County, in the State of California, where PLAINTIFF worked.

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

4. The agents, servants, and/or employees of the Defendants and each of them acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as

1 the agent, servant and/or employee of the Defendants, and personally participated in the conduct
2 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
3 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
4 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
5 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
6 Defendants' agents, servants and/or employees.

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

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

18 7. PLAINTIFF was employed by DEFENDANT in California from May of 2015 to
19 January of 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid
20 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
21 minimum and overtime wages due for all time worked.

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

28 9. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during

1 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
2 lawfully compensate these employees.

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

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

11 **JURISDICTION AND VENUE**

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

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

21 **THE CONDUCT**

22 **Plaintiff's Individual Claims**

23 14. On January 31, 2022, PLAINTIFF was terminated from his employment.
24 PLAINTIFF is a Christian and submitted a Request for COVID-19 Vaccine Exemption to
25 DEFENDANTS on the basis of Religious Accommodation.

26 15. PLAINTIFF is informed and believes, and upon such information and belief
27 alleges, that, at the time of his termination, DEFENDANTS terminated PLAINTIFF solely on the
28 basis that PLAINTIFF is a Christian and submitted a Request for COVID-19 Vaccine Exemption
to DEFENDANTS on the basis of a Religious Accommodation.

1 16. Specifically, in or around November 17, 2021, PLAINTIFF initiated
2 DEFENDANTS' Interactive Process for Religious Accommodation following DEFENDANTS'
3 announcement that all employees would be required to get the COVID-19 Vaccine. Following a
4 meeting with Human Resources, PLAINTIFF further supported his request by submitting a letter
5 and declaration from his church.

6 17. In or around December of 2021, DEFENDANTS informed PLAINTIFF that
7 DEFENDANTS denied PLAINTIFF's request for a religious exemption. Despite submitting all
8 the necessary documentation, DEFENDANTS placed PLAINTIFF on an unpaid 30-day
9 administrative leave on December 15, 2021, informing PLAINTIFF that if PLAINTIFF chose not
10 to be vaccinated, he would be terminated. Shortly thereafter, on January 31, 2022, PLAINTIFF
11 was terminated from his employment with DEFENDANTS.

12 18. PLAINTIFF is informed and believes, and upon such information and belief
13 alleges, that, DEFENDANT's conduct in terminating him was part of a pattern of behavior by
14 DEFENDANT aimed at removing PLAINTIFF because he is a Christian and submitted a Request
15 for COVID-19 Vaccine Exemption to DEFENDANTS on the basis of a Religious
16 Accommodation.

17 19. PLAINTIFF filed a complaint with the California Department of Fair Employment
18 and Housing and received a "right to sue" letter on [REDACTED] thereby exhausting his
19 administrative remedies.

20 **Wage and Hour Violations**

21 20. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
23 matter of company policy, practice and procedure, intentionally, knowingly and systematically
24 failed to provide legally compliant meal and rest periods, failed to accurately compensate
25 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
26 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
27 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to reimburse
28 PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue

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

9 **A. Meal Period Violations**

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

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

1 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
2 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
3 other CALIFORNIA CLASS Members were required from time to time to perform work as
4 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
5 meal break. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS
6 Members does not qualify for limited and narrowly construed “on-duty” meal period exception.
7 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS
8 Members were, from time to time, required to remain on duty, and on call. Further, from time to
9 time, PLAINTIFF and other CALIFORNIA CLASS Members were required to remain on duty,
10 on call, and/or on the premises, and/or to carry cordless communication devices and respond to
11 communications received on said devices during what was supposed to be their off-duty meal
12 periods. PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks
13 without additional compensation and in accordance with DEFENDANTS’ strict corporate policy
14 and practice.

15 **B. Rest Period Violations**

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

1 cordless communication devices and respond to communications received on said devices during
2 what was supposed to be their off-duty rest periods. As a result of their rigorous work schedules
3 and DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS
4 Members were from time to time denied their proper rest periods by DEFENDANTS and
5 DEFENDANTS' managers.

6 **C. Unlawful Rounding Violations**

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

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

1 **D. Unreimbursed Business Expenses**

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

13 27. In the course of their employment, DEFENDANTS from time to time required
14 PLAINTIFF and other CALIFORNIA CLASS Members to use their personal cell phone to
15 correspond and coordinate tasks with other employees as a result of and in furtherance of their
16 job duties as employees for DEFENDANT. But for the use of their own personal cell phones,
17 PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential job
18 duties, including but not limited to sending and receiving work-related communications from
19 DEFENDANTS. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and
20 other CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in
21 the course of their employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA
22 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related
23 to the use of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

24 **E. Wage Statement Violations**

25 28. California Labor Code Section 226 requires an employer to furnish its employees
26 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
27 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
28 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name

1 of the employee and only the last four digits of the employee's social security number or an
2 employee identification number other than a social security number, (8) the name and address of
3 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
4 period and the corresponding number of hours worked at each hourly rate by the employee.

5 29. From time to time during the CLASS PERIOD, when PLAINTIFF and other
6 CALIFORNIA CLASS Members missed meal and rest breaks, or were not paid for all hours
7 worked, DEFENDANTS failed to provide PLAINTIFF and other CALIFORNIA CLASS
8 Members with complete and accurate wage statements that include, among other things, all
9 applicable hourly rates in effect during the pay period and the corresponding amount of time
10 worked at each hourly rate. Further, from time to time, DEFENDANTS failed to issue wage
11 statements that provided the accurate name and address of the legal entity that is the employer of
12 PLAINTIFF and other CALIFORNIA CLASS Members. Additionally, from time to time,
13 DEFENDANTS issued wage statements to PLAINTIFF and other CALIFORNIA CLASS
14 Members that included "Vacation" and "Holiday" hours into the computation of total hours
15 worked for purposes of Cal. Lab. Code § 226(a)(2). However, "Vacation" and "Holiday" hours
16 are not considered hours worked. Accordingly, DEFENDANTS from time to time issued wage
17 statements to PLAINTIFF and other CALIFORNIA CLASS Members that violated Cal. Lab.
18 Code § 226(a)(2).

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

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

26 **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**
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1 32. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
2 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
3 CLASS for all hours worked.

4 33. During the CLASS PERIOD, from time-to-time DEFENDANTS required
5 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work pre-shift, post-
6 shift, and during a scheduled meal break while off the clock. This resulted in PLAINTIFF and
7 other members of the CALIFORNIA CLASS having to work while off-the-clock.

8 34. DEFENDANTS directed and directly benefited from the uncompensated off-the-
9 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

10 35. DEFENDANTS controlled the work schedules, duties, protocols, applications,
11 assignments, and employment conditions of PLAINTIFF and the other members of the
12 CALIFORNIA CLASS.

13 36. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
14 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS from time to
15 time failed to document, track, or pay PLAINTIFF and the other members of the CALIFORNIA
16 CLASS all wages earned and owed for all the work they performed, including pre-shift, post-
17 shift, and during meal period off-the-clock work.

18 37. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
19 exempt employees, subject to the requirements of the California Labor Code.

20 38. DEFENDANTS' policies and practices from time to time deprived PLAINTIFF
21 and the other members of the CALIFORNIA CLASS of all minimum, regular, overtime, and
22 double time wages owed for the off-the-clock work activities. Because PLAINTIFF and the other
23 members of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more
24 than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of
25 overtime pay.

26 39. DEFENDANTS knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.
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1 40. As a result, from time to time, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS forfeited wages due them for all hours worked at DEFENDANTS'
3 direction, control and benefit for the time spent performing work before and after shifts, receiving
4 and responding to work-related communications on personal cell phones outside of their
5 scheduled shifts and working while clocked out for meal periods. DEFENDANTS' uniform
6 policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages
7 for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
8 records.

9 **G. Regular Rate Violation- Overtime, Double Time, Meal and Rest Period Premiums, and**
10 **Sick Pay**

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

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

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

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

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

profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

H. Unlawful Deductions

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

I. CLASS ACTION ALLEGATIONS

47. PLAINTIFF brings the Third through Tenth Causes of Action as a class action pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current and former non-exempt California employees ("CALIFORNIA CLASS") during the period beginning four years prior to the filing of the Complaint and ending on a date determined by the Court ("CLASS PERIOD").

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

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

50. Common questions of law and fact regarding DEFENDANTS' conduct, including but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to provide legally compliant meal and rest periods, failure to reimburse for business expenses, failure to provide accurate itemized wage statements, and failure to ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions

1 affecting solely any individual members of the class. Among the questions of law and fact
2 common to the class are:

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

1 51. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
2 a result of DEFENDANTS’ conduct and actions alleged herein.

3 52. PLAINTIFF’s claims are typical of the claims of the class, and PLAINTIFF has
4 the same interests as the other members of the class.

5 53. PLAINTIFF will fairly and adequately represent and protect the interests of the
6 CALIFORNIA CLASS Members.

7 54. PLAINTIFF retained able class counsel with extensive experience in class action
8 litigation.

9 55. Further, PLAINTIFF’s interests are coincident with, and not antagonistic to, the
10 interests of the other CALIFORNIA CLASS Members.

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

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

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

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

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b. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

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

FIRST CAUSE OF ACTION
WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
(Alleged by PLAINTIFF and against all Defendants)

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

61. PLAINTIFF’s wrongful termination on or about January 31, 2022 was for a pretextual reason(s) to disguise DEFENDANT’s unlawful employment practices directed at PLAINTIFF.

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

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

1 64. As a result of DEFENDANT's actions, PLAINTIFF has suffered substantial
2 losses in earnings and employment benefits and emotional distress in an amount to be determined
3 according to proof at trial.

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

8 66. PLAINTIFF was harmed by DEFENDANT'S wrongful and illegal termination of
9 his employment.

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

12 68. On [REDACTED], PLAINTIFF filed a complaint with the Department of Fair
13 Employment & Housing ("DFEH"), and received an immediate Right to Sue that same day. (See
14 Exhibit #_).

15 **SECOND CAUSE OF ACTION**

16 **VIOLATION OF GOVERNMENT CODE §12940 et seq. – RELIGIOUS**
17 **DISCRIMINATION**

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

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

21 70. PLAINTIFF was employed by DEFENDANT.

22 71. DEFENDANT is an employer covered by Government Code §12940 et seq.

23 72. PLAINTIFF was terminated from his employment and/or suffered other adverse
24 employment actions.

25 73. PLAINTIFF's religion was a substantial motivating reason(s) for his termination
26 and other adverse employment actions.

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Unlawful Business Practices

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

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CLASS ACTION COMPLAINT

1 including Sections 201, 202, 203, 204, 221, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
2 1198, 2802, for which this Court should issue declaratory and other equitable relief pursuant to
3 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
4 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

25 84. 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
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1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

3 85. 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 86. 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 for all time worked, and
9 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
10 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
11 to unfairly compete against competitors who comply with the law.

12 87. 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 88. 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 for all time worked.

22 89. 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 90. 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 is restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **FOURTH 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 CLASS against all Defendants)**

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

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

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

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

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

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

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

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

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

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

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

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

104. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request recovery of all unpaid 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 minimum wage compensation is determined to be owed to the CALIFORNIA 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 CLASS Members. DEFENDANT'S conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

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

105. 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.

106. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the

1 Industrial Welfare Commission requirements for DEFENDANT’s failure to pay these employees
2 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
3 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

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

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

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

1 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
2 regulations.

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

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

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

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

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

119. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime 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 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.

120. PLAINTIFF and the other members of the CALIFORNIA 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 minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

121. 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.

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

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

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

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

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

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

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

EIGHTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code §§ 226)

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

129. 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.

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

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

131. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest

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

CLASS ACTION COMPLAINT

Failure To Pay Wages When Due

(Cal. Lab. Code §§ 203)

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

134. 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.

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

As used in this article:

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

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

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

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

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

139. Cal. Lab. Code § 203 provides:

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

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

TENTH CAUSE OF ACTION

Failure To Reimburse Employees For Required Expenses

(Cal. Lab. Code §§ 2802)

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

142. 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.

143. 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

144. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to using their personal cellular phone all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse

1 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
2 their personal cellular phones for DEFENDANTS within the course and scope of their
3 employment for DEFENDANTS. These expenses were necessary to complete their principal job
4 duties. DEFENDANTS are estopped by DEFENDANTS’ conduct to assert any waiver of their
5 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
6 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
7 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer
8 is required to do under the laws and regulations of California.

9 145. PLAINTIFF therefore demands reimbursement on behalf of the members of the
10 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
11 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with
12 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

13 **PRAYER FOR RELIEF**

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

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

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

- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable 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 each member of the CALIFORNIA 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 CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On Plaintiff's individual claims:

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

4. On all claims:

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

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- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys’ fees and costs of suit, as allowable under the law.

DATED: February 16, 2022

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: February 16, 2022

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Merced County Community
action Board
410 Brenda Joy Callahan..
1235 W. Main St.
Merced, CA 95340



9590 9402 6815 1074 9835 14

2. Article Number (Transfer from service label)

7021 2720 0000 9972 6594

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

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?

If YES, enter delivery address below: ☐ Yes ☐ No

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3. Service Type

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