

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

LOVE AUTOMOTIVE GROUP, INC., a California corporation; and
DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

DAVID MURBACH, an individual, on behalf of himself and on behalf of
all persons similarly situated,

ELECTRONICALLY FILED
1/4/2023

Kern County Superior Court
By Alejandra Velazquez, 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):

Kern Superior Court - Metro Division
1215 Truxton Avenue
Bakersfield, CA 93301

CASE NUMBER: BCV-22-103469
(Número del Caso):

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):

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 1/4/2023

(Fecha)

TAMARAH HARBER-PICKENS

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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Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

DAVID MURBACH, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

LOVE AUTOMOTIVE GROUP, INC., a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No: BCV-22-103469

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

1 Plaintiff DAVID MURBACH, (“PLAINTIFF”), an individual, in his representative capacity
2 on behalf of himself, the State of California, and fellow current and former AGGRIEVED
3 EMPLOYEES, defined *supra*, against: LOVE AUTOMOTIVE GROUP, INC (hereinafter referred
4 to as “DEFENDANT and/or “DEFENDANTS”), alleges on information and belief, except for his
5 own acts and knowledge which are based on personal knowledge, the following:

6 **INTRODUCTION**

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

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

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

- 16 a. Failure to provide compliant meal and rest periods;
- 17 b. Failure to pay all minimum, regular and overtime wages;
- 18 c. Failure to maintain true and accurate records;
- 19 d. Failure to provide accurate itemized wage statements; and
- 20 e. Failure to timely pay wages due during, and upon termination of employment
- 21 f. Failure to reimburse employees for necessary expenditures.

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

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

27 ///

THE PARTIES

6. Defendant LOVE AUTOMOTIVE GROUP, INC. (“DEFENDANT” or “DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

7. DEFENDANTS owns and operate car dealerships in California, including in the county of Kern where PLAINTIFF worked.

PLAINTIFF has been employed by DEFENDANTS in California since January of 2020, paid in part an hourly wage, commission-based compensation, non-discretionary bonuses, and entitled to minimum wages, overtime pay and legally compliant meal and rest periods.

8. PLAINTIFF brings this action in his representative capacity on behalf of the State of California and on behalf of current and former non-exempt, exempt, piece-rate based, and/or commission-based employees (hereinafter “AGGRIEVED EMPLOYEES”) between October 21, 2021 and the present (“PAGA PERIOD”).

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

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

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

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

1 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
2 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject
3 to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant
4 times.

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

10 **JOINT EMPLOYER**

11 14. The Private Attorney General Act ("PAGA"), permits an aggrieved employee to
12 enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* §
13 2699(a).)

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

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

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

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

5 19. At all relevant times, each DEFENDANT, whether named or fictitious, was the
6 agent, employee or other person acting on behalf of each other DEFENDANT, and, in participating
7 in the acts alleged in this Complaint, acted within the scope of such agency or employment and
8 ratified the acts of the other.

9 20. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF's
10 wages, working hours, and/or working conditions.

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

14 **JURISDICTION AND VENUE**

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

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

25 **THE CONDUCT**

26 24. In violation of the applicable sections of the California Labor Code and the
27 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
28 matter of company policy, practice and procedure, intentionally, knowingly and systematically

1 failed to provide legally compliant meal and rest periods, failed to accurately compensate
2 PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to
3 pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time worked, failed to pay
4 PLAINTIFF and other AGGRIEVED employees minimum wages for all time worked, failed to pay
5 PLAINTIFF and other AGGRIEVED employees for off-the-clock work, failed to pay PLAINTIFF
6 and other AGGRIEVED employees for overtime at the correct regular rate of pay, failed to pay
7 PLAINTIFF and other AGGRIEVED employees for meal and rest premiums at the regular rate,
8 failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for business expenses,
9 failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES all wages when due, failed to
10 maintain accurate records and failed to issue to PLAINTIFF and the AGGRIEVED EMPLOYEES
11 with accurate itemized wage statements showing, among other things, all applicable hourly rates in
12 effect during the pay periods and the corresponding amount of time worked at each hourly rate.
13 DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and
14 full payment for all time worked as required by California law which allows DEFENDANTS to
15 illegally profit and gain an unfair advantage over competitors who comply with the law. To the
16 extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
17 DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

18 A. **Regular Rate Violation-Overtime, Double Time, Meal and Rest Period Premiums, and**
19 **Redeemed Sick Pay**

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

1 26. State law provides that employees must be paid overtime at one-and-one-half times
2 their “regular rate of pay.” PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated
3 at an hourly rate plus incentive pay that was tied to specific elements of an employee’s performance.

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

10 28. However, from-time-to-time, when calculating the regular rate of pay, in those pay
11 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double-
12 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
13 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
14 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked
15 rather than just all non-overtime hours worked. Management and supervisors described the
16 incentive/bonus program to potential and new employees as part of the compensation package. As
17 a matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED
18 EMPLOYEES must be included in the “regular rate of pay.” The failure to do so has resulted in a
19 systematic underpayment of overtime and double time compensation, meal and rest period
20 premiums, and redeemed sick pay to PLAINTIFF and other AGGRIEVED EMPLOYEES by
21 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time for
22 non-employees shall be calculated in the same manner as the regular rate of pay for the workweek
23 in which the non-exempt employee uses paid sick time, whether or not the employee actually works
24 overtime in that workweek. DEFENDANTS maintained paid time off (“PTO”) in lieu of sick pay
25 policy. As such, in such an instance, sick pay and PTO are synonymous, thereby requiring
26 DEFENDANTS to include non-discretionary incentive compensation in other regular rate of pay
27 for purposes of redeemed PTO. DEFENDANTS’ conduct, as articulated herein, by failing to
28 include the incentive compensation as part of the “regular rate of pay” for purposes of sick pay

1 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable
2 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

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

14 **B. Meal Period Violations**

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

1 31. From time to time during the PAGA PERIOD, as a result of their rigorous work
2 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and the other
3 AGGRIEVED EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal
4 breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
5 AGGRIEVED EMPLOYEES are required to perform work as ordered by DEFENDANT for more
6 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS
7 fails to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
8 for some workdays in which these employees are required by DEFENDANTS to work ten (10)
9 hours of work. The nature of the work performed by PLAINTIFF and other AGGRIEVED
10 EMPLOYEES does not qualify for the limited and narrowly construed "onduty" meal period
11 exception. When they were provided with meal periods, PLAINTIFF and other AGGRIEVED
12 EMPLOYEES were, from time to time, required to remain on duty and on call. DEFENDANTS'
13 failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with legally required meal
14 breaks is evidenced by DEFENDANTS' business records. PLAINTIFF and other AGGRIEVED
15 EMPLOYEES therefore forfeit meal breaks without additional compensation and in accordance
16 with DEFENDANT'S' strict corporate policy and practice.

17 **C. Rest Period Violations**

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

1 rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other
2 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
3 DEFENDANTS and DEFENDANTS managers.

4 **D. Unreimbursed Business Expenses**

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

15 34. In the course of their employment, DEFENDANTS required PLAINTIFF and other
16 AGGRIEVED EMPLOYEES to use their personal cell phones as a result of and in furtherance
17 of their job duties. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required
18 to use their personal cell phones in order to perform work related tasks. However, DEFENDANTS
19 unlawfully failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for the use of
20 their personal cell phones. As a result, in the course of their employment with DEFENDANTS, the
21 PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses that
22 included, but were not limited to, costs related to the use of their personal cell phones, all on behalf
23 of and for the benefit of DEFENDANTS.

24 **E. Wage Statement Violations**

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

1 name 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 36. From time to time during the PAGA PERIOD, when PLAINTIFF and other
6 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
7 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
8 to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage
9 statements which failed to show, among other things, all deductions, the total hours worked and all
10 applicable hourly rates in effect during the pay period, and the corresponding amount of time
11 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
12 periods.

13 37. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
14 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with Cal.
15 Lab. Code § 226.

16 38. As a result, DEFENDANT issued PLAINTIFF and other AGGRIEVED
17 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
18 violations are knowing and intentional, were not isolated due to an unintentional payroll error due
19 to clerical or inadvertent mistake.

20 **F. Commission and Piece-Rate Violations**

21 39. From time-to-time during the PAGA PERIOD, PLAINTIFF and the CALIFORNIA
22 CLASS were paid in part on a commission and/or piece-rate basis. In those instances where
23 PLAINTIFF and the AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-
24 rate basis, PLAINTIFF and the AGGRIEVED EMPLOYEES were entitled to be separately
25 compensated for all non-productive time at an hourly rate that is no less than the applicable
26 minimum wage. Notwithstanding, in those instances where PLAINTIFF and the AGGRIEVED
27 EMPLOYEES were paid in part on a commission and/or piece-rate basis, DEFENDANT failed to
28 separately compensate PLAINTIFF and the AGGRIEVED EMPLOYEES for all non-productive

time, including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable minimum wage. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited minimum wages and overtime wages by DEFENDANT'S failure to separately compensate their non-productive time at an hourly rate that is no less than the applicable minimum wage

g. Unlawful Deductions

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

FIRST CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, et seq.]

(By PLAINTIFF and Against All DEFENDANTS)

41. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

43. PLAINTIFF brings this Representative Action on behalf of the State of California with respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by DEFENDANT during the PAGA PERIOD (October 21, 2021 to present).

1 44. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
2 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANT within the meaning
3 of Labor Code Section 2699(c).

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

7 46. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
8 Section 2699.3. By certified letter, return receipt requested, dated October 21, 2022, PLAINTIFF
9 gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to
10 DEENDANT of the specific provisions of the Labor Code alleged to have been violated, including
11 the facts and theories to support the alleged violations. (See Exhibit #1.)

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

17 48. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
18 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of Labor
19 Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510,
20 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804 in the following
21 amounts:

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

27 b. For violations of Labor Code Section 226(a), a civil penalty
28 in the amount of two hundred fifty dollars (\$250) for each

1 AGGRIEVED EMPLOYEE for any initial violation and one
2 thousand dollars for each subsequent violation [penalty per Labor
3 Code Section 226.3];

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

9 d. For violations of Labor Code Sections 226.7, 510 and 512, a
10 civil penalty in the amount of fifty dollars (\$50) for each underpaid
11 AGGRIEVED EMPLOYEE for the initial violation and hundred
12 dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for
13 each subsequent violation [penalty per Labor Code Section 558];

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

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

22 g. For violations of Labor Code Sections 1194, 1194.2, 1197,
23 1198 and 1199, a civil penalty in the amount of one hundred dollars
24 (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial
25 violation and two hundred dollars fifty (\$250) per AGGRIEVED
26 EMPLOYEE per pay period for each subsequent violation [penalty
27 per Labor Code Section].
28

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

50. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

- a. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to Labor Code § 2699, *et seq.*;
- b. For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act; and
- c. For such other relief as the Court deems just and proper.

DATED: December 27, 2022

ZAKAY LAW GROUP, APLC

By:

Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1



ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

Client # 55101

October 21, 2022

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

LOVE AUTOMOTIVE GROUP, INC.

c/o Heather Bryant

3201 Cattle Drive

Bakersfield, CA 93313

Sent via Certified Mail and Return Receipt 7022 2410 0001 4932 6649

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, 1198.5, 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 DAVID MURBACH (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant LOVE AUTOMOTIVE GROUP, INC. (“Defendant”). Plaintiff has been employed by Defendant in California since January of 2020 as a non-exempt employee, paid in part by commission-based compensation, 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. Plaintiff also worked at times for Defendant as a commission-based employee entitled to be separately compensated for his non-productive time, including rest periods. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

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, exempt, commission-based and/or piece-rate based employees who worked for Defendant in California during the relevant claim period.

A true and correct copy of the proposed Complaint 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,

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

Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

DAVID MURBACH, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

LOVE AUTOMOTIVE GROUP, INC., a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

- 1 6) FAILURE TO PROVIDE ACCURATE
2 ITEMIZED STATEMENTS IN
3 VIOLATION OF CAL. LAB. CODE § 226;
4 7) FAILURE TO PROVIDE WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203;
7 8) FAILURE TO REIMBURSE
8 EMPLOYEES FOR REQUIRED
9 EXPENSES IN VIOLATION OF
10 CALIFORNIA LABOR CODE §2802;
11 9) UNLAWFUL DEDUCTIONS.

12 **DEMAND FOR A JURY TRIAL**

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

16 **THE PARTIES**

17 1. Defendant LOVE AUTOMOTIVE GROUP, INC. (“DEFENDANT” or
18 “DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted
19 and continues to conduct substantial and regular business in the state of California.

20 2. DEFENDANTS owns and operate car dealerships in California, including in the
21 county of Kern where PLAINTIFF worked.

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

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

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

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

20 7. PLAINTIFF has been employed by DEFENDANTS in California since January of
21 2020, paid in part an hourly wage, commission-based compensation, non-discretionary bonuses,
22 and entitled to minimum wages, overtime pay and legally compliant meal and rest periods.

23 8. PLAINTIFF brings this Class Action on behalf of himself and a California class,
24 defined as all current and former non-exempt, exempt, piece-rate based, and/or commission-based
25 employees employed by DEFENDANTS in California ("CALIFORNIA CLASS") at any time
26 during the period beginning four (4) years prior to the filing of this Complaint and ending on the
27 date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the
28

1 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars
2 (\$5,000,000.00).

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

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

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

22 **JURISDICTION AND VENUE**

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

27 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and

1 DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities
2 in this County and/or conduct substantial business in this County, and (ii) committed the wrongful
3 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

4 **THE CONDUCT**

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

23 **A. Meal and Rest Period Violations**

24 15. Pursuant to the Industrial Welfare Commission Wage Orders and the California
25 Labor Codes, an employer shall not employ an employee for a work period of more than five (5)
26 hours per day without providing the employee with a meal period of not less than thirty (30)
27 minutes, except that if the total work period per day of the employee is no more than six (6) hours,
28 the meal period may be waived by mutual consent of both the employer and employee. An

1 employer shall not employ an employee for a work period of more than ten (10) hours per day
2 without providing the employee with a second meal period of not less than thirty (30) minutes,
3 except that if the total hours worked is no more than twelve (12) hours, the second meal period
4 may be waived by mutual consent of the employer and the employee only if the first meal period
5 was not waived. If an employer fails to provide an employee with a mandated meal period, the
6 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
7 compensation for each workday that the meal period is not provided.

8 16. From time-to-time during the CALIFORNIA CLASS PERIOD, as a result of
9 understaffing and their rigorous work schedule, PLAINTIFF and other CALIFORNIA CLASS
10 members were from time to time unable to take thirty (30) minute off duty meal breaks and were
11 not fully relieved of duty for meal periods. PLAINTIFF and other CALIFORNIA CLASS
12 Members were from time to time required to perform work as ordered by DEFENDANT for more
13 than five (5) hours during a shift without receiving an off-duty meal break. Further,
14 DEFENDANT from time-to-time failed to provide PLAINTIFF and CALIFORNIA CLASS
15 members with a second off-duty meal period from time to time in which these employees were
16 required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and
17 the other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
18 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

19 17. Further, pursuant to the Industrial Welfare Commission Wage Orders,
20 DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS members for all their
21 time worked, meaning the time during which an employee is subject to the control of an employer,
22 including all the time the employee suffered or permitted to work. DEFENDANT required
23 PLAINTIFF and CALIFORNIA CLASS members to work without paying them for all the time
24 they were under the DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF
25 to work while clocked out during what was supposed to be PLAINTIFF's off duty meal break due
26 to PLAINTIFF's rigorous work schedule and DEFENDANT's understaffing. PLAINTIFF was
27 from time to time interrupted by work assignments while clocked out for what should have been
28 PLAINTIFF's off-duty meal break. As a result, the PLAINTIFF and other CALIFORNIA CLASS

1 members forfeited minimum wage and overtime compensation by regularly working without their
2 time being accurately recorded and without compensation at the applicable minimum wage and
3 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
4 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
5 records.

6 18. Pursuant to the Industrial Welfare Commission Wage Orders and the California
7 Labor Codes, an employer shall authorize and permit all employees to take a rest periods, which
8 so far as practical shall be in the middle of each work period. Generally, an employer must provide
9 ten (10) minutes of paid rest for every four hours or major fraction thereof. If an employer fails
10 to provide an employee a rest period, the employer shall pay the employee one (1) hour of pay at
11 the employee's regular rate of pay for each workday that the rest period is not provided.

12 19. Additionally, during the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
13 CALIFORNIA CLASS members were from time-to-time required to work in excess of four (4)
14 hours without being provided duty-free, uninterrupted, ten (10) minute rest period. Further, for
15 the same reasons, these employees were denied their first rest periods of at least ten (10) minutes
16 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
17 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
18 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
19 or more from time to time. As a result, PLAINTIFF and the other CALIFORNIA CLASS
20 Members were from time to time required to remain on the premises, on-duty and on-call during
21 their rest periods. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided
22 with one-hour wages in lieu thereof.

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

25 20. State law provides that employees must be paid overtime at one-and-one-half times
26 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS were compensated at
27 an hourly rate plus a piece-rate, and/or non-discretionary incentive pay that was tied to specific
28 elements of an employee's performance and/or commissions.

1 21. DEFENDANTS' non-discretionary commission and bonus program provided the
2 CALIFORNIA CLASS, including PLAINTIFF, with commissions and/or bonus compensation
3 when the employees met the various performance goals set by DEFENDANT. However, when
4 calculating the regular rate of pay, in those pay periods where PLAINTIFF and the CALIFORNIA
5 CLASS worked overtime and earned non-discretionary bonus and/or commission wages,
6 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or
7 commission wages as part of the employees' "regular rate of pay."

8 22. Management and supervisors described the bonus and commissions programs and
9 commission compensation program to potential and new employees as part of the compensation
10 package for new and used car salespersons including PLAINTIFF and the CALIFORNIA
11 CLASS. As a matter of law, the incentive and commission compensation received by
12 PLAINTIFFS and other CALIFORNIA CLASS members must be included and correctly
13 calculated into the "regular rate of pay" for purposes of overtime and double time compensation,
14 meal and rest period premium payments, and sick pay. DEFENDANT's failure to do so has
15 resulted in DEFENDANT's systematic underpayment of overtime and double time compensation,
16 meal and rest period premium payments, and sick pay to PLAINTIFF and other CALIFORNIA
17 CLASS members. Specifically, California Labor Code Section 246 mandates that paid sick time
18 for non-employees shall be calculated in the same manner as the regular rate of pay for the
19 workweek in which the employee uses paid sick time, whether or not the employee actually works
20 overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include
21 the incentive compensation as part of the "regular rate of pay" for purposes of sick pay
22 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable
23 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

24 23. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
26 matter of company policy, practice and procedure, intentionally and knowingly failed to
27 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
28 of pay for all overtime and double time compensation, meal and rest period premium payments,

1 and sick pay. This uniform policy and practice of DEFENDANTS is intended to purposefully
2 avoid the payment of the correct overtime and double time compensation, meal and rest period
3 premium payments, and sick pay as required by California law which allowed DEFENDANTS to
4 illegally profit and gain an unfair advantage over competitors who complied with the law. To the
5 extent equitable tolling operates to toll claims by the CALIFORNIA CLASS members against
6 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

7 **C. Commission and Piece-Rate Violations**

8 24. From time-to-time during the CALIFORNIA CLASS PERIOD, PLAINTIFF and
9 the CALIFORNIA CLASS were paid in part on a commission and/or piece-rate basis. In those
10 instances where PLAINTIFF and the CALIFORNIA CLASS were paid in part on a commission
11 and/or piece-rate basis, PLAINTIFF and the CALIFORNIA CLASS were entitled to be separately
12 compensated for all non-productive time at an hourly rate that is no less than the applicable
13 minimum wage. Notwithstanding, in those instances where PLAINTIFF and the CALIFORNIA
14 CLASS were paid in part on a commission and/or piece-rate basis, DEFENDANT failed to
15 separately compensate PLAINTIFF and the CALIFORNIA CLASS for all non-productive time,
16 including but not limited to, paid rest periods, at an hourly rate that is no less than the applicable
17 minimum wage. As a result, PLAINTIFF and the CALIFORNIA CLASS forfeited minimum
18 wages and overtime wages by DEFENDANT'S failure to separately compensate their non-
19 productive time at an hourly rate that is no less than the applicable minimum wage.

20 **D. Unreimbursed Business Expenses**

21 25. DEFENDANTS as a matter of corporate policy, practice, and procedure,
22 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
23 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and
24 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf
25 of DEFENDANTS. Under California Labor Code Section 2802, employers are required to
26 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
27 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
28 necessary expenditures or losses incurred by the employee in direct consequence of the discharge

1 of his or her duties, or of his or her obedience to the directions of the employer, even though
2 unlawful, unless the employee, at the time of obeying the directions, believed them to be
3 unlawful.”

4 26. In the course of their employment, DEFENDANTS required PLAINTIFF and
5 other CALIFORNIA CLASS Members to use their personal cell phones as a result of and in
6 furtherance of their job duties as employees for DEFENDANT. But for the use of their own
7 personal cell phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete
8 their essential job duties, including but not limited to, sending and receiving work-related
9 communications from DEFENDANTS. However, DEFENDANTS unlawfully failed to
10 reimburse PLAINTIFF and other CALIFORNIA CLASS Members for their use of their personal
11 cell phones. As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF
12 and other CALIFORNIA CLASS Members incurred unreimbursed business expenses, but were
13 not limited to, costs related to the use of their personal cellular phones, all on behalf of and for
14 the benefit of DEFENDANTS.

15 **E. Wage Statement Violations**

16 27. California Labor Code Sections 226 and 226.2 require an employer to furnish its
17 employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total
18 hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
19 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
20 paid, (7) the name of the employee and only the last four digits of the employee’s social security
21 number or an employee identification number other than a social security number, (8) the name
22 and address of the legal entity that is the employer, (9) all applicable hourly rates in effect during
23 the pay period and the corresponding number of hours worked at each hourly rate by the
24 employee; (10) the total hours of compensable rest and recovery periods, the rate of compensation,
25 and the gross wages paid for those periods during the pay period, and (11) the total hours of other
26 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
27 pay period.

1 28. From time-to-time during the CALIFORNIA CLASS PERIOD, DEFENDANT
2 furnished PLAINTIFF and the CALIFORNIA CLASS written wage statements that failed to
3 accurately show (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units
4 earned and any applicable piece-rate, (4) net wages earned, (5) all applicable hourly rates in effect
5 during the pay period and the corresponding number of hours worked at each hourly rate by the
6 employee; (6) the total hours of compensable rest and recovery periods, the rate of compensation,
7 and the gross wages paid for those periods during the pay period, and (7) the total hours of other
8 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
9 pay period.

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

13 30. As a result, DEFENDANTS issued PLAINTIFF and the CALIFORNIA CLASS
14 with wage statements that violate Cal. Lab. Code §§ 226 and 226.2. Further, DEFENDANTS'
15 violations are knowing and intentional, were not isolated or due to an unintentional payroll error
16 due to clerical or inadvertent mistake.

17 **F. Unlawful Deductions**

18 31. DEFENDANT unlawfully deducted wages from PLAINTIFF and CALIFORNIA
19 CLASS Members' pay for taxes and for vehicle repairs without authorization to do so or notice
20 to PLAINTIFF and the CALIFORNIA CLASS Members. As a result, DEFENDANT violated
21 Labor Code § 221.

22 32. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
23 required off-duty meal breaks to him and paid rest periods to him as required by the applicable
24 Wage Order and Labor Code. DEFENDANT failed to compensate PLAINTIFF for his missed
25 meal and rest breaks. The nature of the work performed by PLAINTIFF did not prevent him from
26 being relieved of all of his duties for the legally required off-duty meal periods. Further,
27 DEFENDANT failed to provide PLAINTIFF with a second off-duty meal period each workday
28 in which PLAINTIFF was required by DEFENDANT to work ten (10) hours of work. As a result,

1 DEFENDANT’S failure to provide PLAINTIFFS with the legally required second off-duty meal
2 period is evidenced by DEFENDANT’s business records. From time to time, and as a result of
3 DEFENDANT not accurately recording all missed meal and rest periods, and failing to pay
4 minimum wages due for all time worked and separate compensation for rest breaks, the wage
5 statements issued to PLAINTIFF by DEFENDANT violated California law, and in particular,
6 Labor Code Section 226(a). Further, DEFENDANT failed to reimburse PLAINTIFF for all
7 required business expenses including for the use of his personal cell phone. To date,
8 DEFENDANT has yet to pay PLAINTIFF all of his wages due to him and all premiums due to
9 him for missed meal and rest breaks and DEFENDANT has failed to pay any penalty wages owed
10 to him under California Labor Code Section 203. The amount in controversy for PLAINTIFF
11 individually does not exceed \$75,000.

12 **THE CALIFORNIA CLASS**

13 33. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
14 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a Class
15 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of all current and former non-exempt,
16 exempt, exempt, piece-rate based, and/or commission-based employees employed by
17 DEFENDANT in California (“CALIFORNIA CLASS”) at any time during the period beginning
18 four (4) years prior to the filing of this Complaint and ending on the date as determined by the
19 Court (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of
20 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

21 34. To the extent equitable tolling operates to toll claims by the CALIFORNIA
22 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
23 accordingly.

24 35. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
25 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
26 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
27 and illegal meal and rest period policies. Defendant further failed to reimburse for business
28 expenses, failed to compensate for off-the-clock work, failed to provide accurate itemized wage

1 statements, and failed to maintain required records, and interest, statutory and civil penalties,
2 attorney's fees, costs, and expenses.

3 36. The members of the class are so numerous that joinder of all class members is
4 impractical.

5 37. Common questions of law and fact regarding DEFENDANTS' conduct, including
6 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failing to
7 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
8 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
9 minimum wage and overtime, exist as to all members of the class and predominate over any
10 questions affecting solely any individual members of the class. Among the questions of law and
11 fact common to the class are:

- 12 i. Whether DEFENDANTS maintained legally compliant meal period policies
13 and practices;
- 14 ii. Whether DEFENDANTS maintained legally compliant rest period policies
15 and practices;
- 16 iii. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
17 CLASS Members accurate premium payments for missed meal and rest
18 periods;
- 19 iv. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
20 CLASS Members accurate overtime wages;
- 21 v. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
22 CLASS Members at least minimum wage for all hours worked;
- 23 vi. Whether Defendants failed to compensate PLAINTIFF and the
24 CALIFORNIA CLASS Members for required business expenses;
- 25 vii. Whether DEFENDANTS issued legally compliant wage statements;
- 26 viii. Whether DEFENDANTS committed an act of unfair competition by
27 systematically failing to record and pay PLAINTIFF and the other members
28 of the CALIFORNIA CLASS for all time worked;

- ix. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- x. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

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

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

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

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

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

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

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

45. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover,

1 since the damages suffered by individual members of the class may be relatively small, the
2 expense and burden of individual litigation makes it practically impossible for the members of the
3 class individually to redress the wrongs done to them. Without class certification and
4 determination of declaratory, injunctive, statutory and other legal questions within the class
5 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
6 create the risk of:

- 7 i. Inconsistent or varying adjudications with respect to individual members of the
8 CALIFORNIA CLASS which would establish incompatible standards of
9 conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- 10 ii. Adjudication with respect to individual members of the CALIFORNIA
11 CLASS which would as a practical matter be dispositive of the interests of the
12 other members not party to the adjudication or substantially impair or impeded
13 their ability to protect their interests.

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

17 **FIRST CAUSE OF ACTION**

18 **Unlawful Business Practices**

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

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

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

24 48. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code
25 § 17021.

26 49. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
27
28

1 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
2 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
3 as follows:

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

9 Cal. Bus. & Prof. Code § 17203.

10 50. By the conduct alleged herein, DEFENDANT has engaged and continues to engage
11 in a business practice which violates California law, including but not limited to, the applicable
12 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code
13 including Sections 201, 202, 203, 204, 206.5, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198
14 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
15 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
16 constitute unfair competition, including restitution of wages wrongfully withheld.

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

22 52. By the conduct alleged herein, DEFENDANT's practices were deceptive and
23 fraudulent in that DEFENDANT's uniform policy and practice failed to pay all minimum and
24 overtime wages due, failed to provide the legally mandated meal and rest periods, failed to pay
25 the required amount of compensation for missed meal and rest periods, and failed to reimburse
26 necessary business expenses incurred due to a systematic business practice that cannot be
27 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
28 requirements in violation of Cal. Bus. Code §§ 17200, et seq., and for which this Court should

1 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
2 restitution of wages wrongfully withheld.

3 53. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
4 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANT.

7 54. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
8 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures failed to
9 provide all legally required meal and rest breaks to PLAINTIFF and the other members of the
10 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

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

16 56. PLAINTIFF further demands on behalf of himself and each member of the
17 CALIFORNIA CLASS one (1) hour of pay for each workday in which a rest period was not given
18 and a premium was not timely provided as required by law.

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

25 58. All the acts described herein as violations of, among other things, the Industrial
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
27 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
28 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business

practices in violation of Cal. Bus. & Prof. Code §§ 17200, et seq.

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

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

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

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)

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

63. 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.

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

3 65. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a less wage than
5 the minimum so fixed is unlawful.

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

8 67. As set forth above, during the CLASS PERIOD, DEFENDANT maintained a
9 uniform wage practice of paying PLAINTIFF and the other members of the CALIFORNIA
10 CLASS without regard to the correct amount of time they worked. As set forth herein,
11 DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny timely
12 payment of wages due to PLAINTIFF and the other members of the CALIFORNIA CLASS.

13 68. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
15 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
16 and the other members of the CALIFORNIA CLASS regarding minimum wage pay.

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

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

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

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

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

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

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

THIRD CAUSE OF ACTION

Failure To Pay Overtime Compensation

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

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

76. 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.

77. 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 DEFENDANTS' failure to properly compensate the members of the CALIFORNIA CLASS for all overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek during the CLASS PERIOD.

78. 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.

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

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

81. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were required by DEFENDANT to work for DEFENDANT and were not paid

1 for all the time they worked, including overtime work.

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

9 83. In committing these violations of the California Labor Code, DEFENDANT acted
10 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
11 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
12 laws and regulations.

13 84. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
14 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full
15 compensation for all overtime worked.

16 85. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
17 the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF
18 and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other
19 members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement
20 that would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFF
21 bring this Action on behalf of himself and the CALIFORNIA CLASS based on DEFENDANT's
22 violations of non-negotiable, non-waivable rights provided by the State of California.

23 86. During the CLASS PERIOD, PLAINTIFF and the other members of the
24 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
25 failure to pay all earned wages.

26 87. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
27 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
28 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even

1 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
2 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay
3 using the applicable overtime rate as evidenced by DEFENDANT's business records and
4 witnessed by employees.

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

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

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

24 91. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
25 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
26 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
27 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
28 overtime compensation is determined to be owed to the CALIFORNIA CLASS Members who

1 have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201
2 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
3 Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
4 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
5 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
6 recover statutory costs.

7 **FOURTH CAUSE OF ACTION**

8 **Failure To Provide Required Meal Periods**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

15 93. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
16 required off-duty meal breaks to PLAINTIFF and the CALIFORNIA CLASS as required by the
17 applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and
18 the CALIFORNIA CLASS did not prevent these employees from being relieved of all of their
19 duties for the legally required off-duty meal periods. As a result of their rigorous work schedules,
20 PLAINTIFF and the CALIFORNIA CLASS were often not fully relieved of duty by
21 DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide
22 PLAINTIFF and the CALIFORNIA CLASS with legally required meal breaks prior to their fifth
23 (5th) hour of work is evidenced by DEFENDANT's business records. As a result, PLAINTIFF
24 and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without
25 additional compensation and in accordance with DEFENDANT's strict corporate policy and
26 practice.

27 94. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
28 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members

1 who were not provided a meal period, in accordance with the applicable Wage Order, one
2 additional hour of compensation at each employee's regular rate of pay for each workday that a
3 meal period was not provided.

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

7 **FIFTH CAUSE OF ACTION**

8 **Failure To Provide Required Rest Periods**

9 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

14 97. During the CLASS PERIOD, PLAINTIFF and the CALIFORNIA CLASS were
15 also required to work in excess of four (4) hours without being provided ten (10) minute rest
16 periods. Further, these employees were denied their first rest periods of at least ten (10) minutes
17 for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at
18 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
19 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
20 or more. PLAINTIFF and the CALIFORNIA CLASS were also not provided with one-hour
21 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and the
22 CALIFORNIA CLASS were periodically denied their proper rest periods by DEFENDANT and
23 DEFENDANT's managers.

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

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

SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code §§ 226)

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

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.

1. Cal. Labor Code § 226 provides that an employer must furnish employees with an “accurate itemized” statement in writing showing: (1) Gross wages earned; (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; (3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) Net wages earned; (6) The inclusive dates of the period for which the employee is paid;; (7) 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 or an employee identification number other than a social security number may be shown on the itemized statement; (8) The name and address of the legal entity that is the employer, and (9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

2. During the CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately show, among other things, (1) Gross wages earned; (2) Total hours worked by the employee, (3) The number of piece-rate units earned and any applicable piece rate

1 if the employee is paid on a piece-rate basis; (4) All deductions; (5) Net wages earned; and (6) all
2 applicable hourly rates in effect during the pay period and the corresponding number of hours
3 worked at each hourly rate.

4 3. Further, during the CLASS PERIOD, DEFENDANTS also failed to provide
5 PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate
6 wage statements in compliance with Cal. Labor Code Section 226.2, which failed to accurately
7 show, among other things: (1) the total hours of compensable rest and recovery periods; and (2)
8 the total hours of other nonproductive time, the rate of compensation for the nonproductive time
9 and the gross wages paid for the nonproductive time during the applicable pay period.

10 4. PLAINTIFFS and the members of the CALIFORNIA CLASS were injured by
11 DEFENDANTS' violations in that they could not promptly and easily determine from the wage
12 statement alone, the amount of gross or net wages paid, the total hours worked, the number pf
13 piece-rate units earned and any applicable piece-rate, all applicable hourly rates in effect during
14 the pay period and the corresponding number of hours worked at each hourly rate to the employee
15 during the applicable pay period.

16 5. DEFENDANTS violations of Cal. Labor Code § 226 and 226.2 were knowing and
17 intentional in that DEFENDANTS willfully intended to issue wage statements that were out of
18 compliance with § 226 and 226.2.

19 101. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor
20 Code § 226 and 226.2, causing injury and damages to the PLAINTIFF and the other members of
21 the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended
22 calculating the correct rates for the overtime worked and the amount of employment taxes which
23 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.
24 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
25 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
26 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
27 pursuant to Cal. Lab. Code § 226, and all other damages and penalties available pursuant to Labor
28 Code § 226.2(a)(6), all in an amount according to proof at the time of trial (but in no event more

1 than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
2 CALIFORNIA CLASS herein).

3 **SEVENTH CAUSE OF ACTION**

4 **Failure To Pay Wages When Due**

5 **(Cal. Lab. Code §§ 203)**

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

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

9 103. Cal. Lab. Code § 200 provides, in relevant part, that:

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

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

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

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

1 date of the mailing shall constitute the date of payment for purposes
2 of the requirement to provide payment within 72 hours of the notice
3 of quitting.

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

6 107. Cal. Lab. Code § 203 provides, in relevant part, that:

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

13
14 108. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
15 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

16 109. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
17 members of the CALIFORNIA CLASS whose employment has terminated and who have unpaid
18 minimum and/or overtime wages and/or missed meal and rest breaks without being paid the
19 legally required penalties by DEFENDANT, PLAINTIFF demands up to thirty days of pay as
20 penalty for not timely paying all wages due at time of termination for all employees who
21 terminated employment during the CLASS PERIOD plus interest and statutory costs as allowed
22 by law.

23 **EIGHTH CAUSE OF ACTION**

24 **Failure To Reimburse Employees For Required Expenses**

25 **(Cal. Lab. Code §§ 2802)**

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

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

1 Complaint.

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

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

9 112. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
10 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
11 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
12 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
13 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
14 using their personal cellular phone all on behalf of and for the benefit of DEFENDANTS.
15 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
16 DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of
17 DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse
18 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
19 their personal cellular phones for DEFENDANTS within the course and scope of their
20 employment for DEFENDANTS. These expenses were necessary to complete their principal job
21 duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their
22 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
23 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
24 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer
25 is required to do under the laws and regulations of California.

26 113. PLAINTIFF therefore demands reimbursement on behalf of the members of the
27 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
28

1 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with
2 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

3 **NINTH CAUSE OF ACTION**

4 **Unlawful Deductions from PLAINTIFF and CLASS MEMBERS Paychecks**

5 **[Cal. Labor Code §§ 221 and 223]**

6 **(By PLAINTIFF and the CLASS MEMBERS Against all DEFENDANTS)**

7 114. PLAINTIFF incorporate herein by specific reference, as though fully set forth, the
8 allegations in the preceding paragraphs.

9 115. During the CLASS PERIOD, DEFENDANT regularly and consistently
10 maintained corporate policies and procedures designed to reduce labor costs by reducing or
11 minimizing the amount of compensation paid to its employees, especially overtime compensation.

12 116. DEFENDANT made deductions from PLAINTIFF and the other CLASS
13 MEMBERS' paychecks including but limited to amounts for health insurance earned by
14 PLAINTIFF and the other CLASS MEMBERS' during various pay periods.

15 117. Labor Code § 221 provides it is unlawful for any employer to collect or receive
16 from an employee any part of wages theretofore paid by employer to employee.

17 118. Labor Code § 223 provides that where any statute or contract requires an employer
18 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
19 purporting to pay the wage designated by statute or by contract. Labor Code section 225 further
20 provides that the violation of any provision of Labor Code §§ 221 and 223 is a misdemeanor.

21 119. As a result of the conduct alleged above, DEFENDANTS unlawfully collected or
22 received from PLAINTIFFS and the other CLASS MEMBERS' part of the wages paid to their
23 employees.

24 120. Wherefore, PLAINTIFFS and the other CLASS MEMBERS demand the return of
25 all wages unlawfully deducted from the paychecks, including interest thereon, penalties,
26 reasonable attorneys' fees, and costs of suit pursuant to Labor Code §§ 225.5 and 1194.

27 **PRAYER FOR RELIEF**

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

3 1. On behalf of the CALIFORNIA CLASS:

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

14 2. On behalf of the CALIFORNIA CLASS:

- 15 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
16 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
17 pursuant to Cal. Code of Civ. Proc. § 382;
18 b. Compensatory damages, according to proof at trial, including compensatory
19 damages for overtime compensation and separately owed rest periods, due to
20 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
21 applicable CLASS PERIOD plus interest thereon at the statutory rate;
22 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
23 the applicable IWC Wage Order;
24 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
25 which a violation occurs and one hundred dollars (\$100) per each member of the
26 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
27 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
28 violation of Cal. Lab. Code § 226

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

4 3. On all claims:

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

8
9 DATED: October 21, 2022

10 **ZAKAY LAW GROUP, APLC**

11 By: 
12 Shani O. Zakay
13 Attorney for PLAINTIFF

14 **DEMAND FOR A JURY TRIAL**

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

16
17 DATED: October 21, 2022

18 **ZAKAY LAW GROUP, APLC**

19 By: 
20 Shani O. Zakay
21 Attorney for PLAINTIFF
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