

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

REDZONE SECURITY INC., a California Corporation; and DOES 1-50,
Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

BRAD KLEIN, an individual, on behalf of himself and on behalf of all
persons similarly situated,

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

Riverside Superior Court
4050 Main Street
Riverside, CA 92501

CASE NUMBER:
(Número del Caso): CVRI 2202841

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

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

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

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

DATE:
(Fecha) 07/11/2022

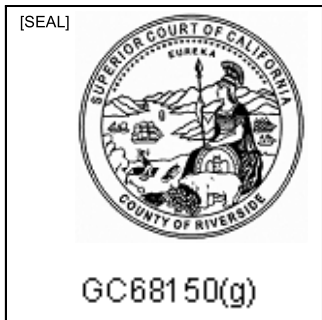
Clerk, by _____, Deputy
(Secretario) K. King (Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):



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Attorneys for Plaintiff BRAD KLEIN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

BRAD KLEIN, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

REDZONE SECURITY INC., a California
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: **CVRI 2202841**

CLASS ACTION COMPLAINT FOR:

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

ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE § 226;
7) FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN
VIOLATION OF CALIFORNIA LABOR
CODE §2802; and
9) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ.

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant REDZONE SECURITY INC. (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Riverside. DEFENDANT provides security services in the state of California, including Riverside County, where PLAINTIFF worked.

2. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANT by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the DEFENDANT 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.

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

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

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

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

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

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

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

1 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
2 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
3 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
4 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
5 other members of the CALIFORNIA CLASS who have been economically injured by
6 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
7 relief.

8 9. DEFENDANT's uniform policies and practices alleged herein were unlawful,
9 unfair, and deceptive business practices whereby DEFENDANT retained and continues to retain
10 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

16 **JURISDICTION AND VENUE**

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

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

26 **THE CONDUCT**

27 13. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT, as a

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

18 **A. Meal Period Violations**

19 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
20 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
21 meaning the time during which an employee is subject to the control of an employer, including
22 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
23 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
24 without paying them for all the time they were under DEFENDANT's control. Specifically, as a
25 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
26 DEFENDANT required PLAINTIFF to work during what was supposed to be PLAINTIFF's off-
27 duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial
28 lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited

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

5 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
6 requirements and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
7 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
8 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
9 other CALIFORNIA CLASS Members were required from time to time to perform work as
10 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
11 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
12 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
13 these employees were required by DEFENDANT to work ten (10) hours of work from time to
14 time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS
15 Members does not qualify for limited and narrowly construed "on-duty" meal period exception.
16 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS
17 Members were from time to time required to remain on premises, on duty, on call, and carry
18 cordless communication devices in order to receive and respond to communications received on
19 said devices. PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal
20 breaks without additional compensation and in accordance with DEFENDANT's strict corporate
21 policy and practice.

22 **B. Rest Period Violations**

23 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
24 CALIFORNIA CLASS members were also required from time to time to work in excess of four
25 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
26 requirements and DEFENDANT's inadequate staffing. Further, for the same reasons these
27 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
28 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten

(10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on premises, on duty, on call and carry cordless communication devices in order to receive and respond to communications received on said devices. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

C. Unreimbursed Business Expenses

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

18. In the course of their employment, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance of their job duties as employees for DEFENDANT. But for the use of their own personal cell phone, PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential job duties. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in the

1 course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA
2 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related
3 to the use of their personal cellular phone, all on behalf of and for the benefit of DEFENDANT.

4 **D. Wage Statement Violations**

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

13 20. From time to time during the CLASS PERIOD, when PLAINTIFF and other
14 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
15 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
16 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
17 wage statements which failed to show, among other things, the total hours worked and all
18 applicable hourly rates in effect during the pay period and the corresponding amount of time
19 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
20 periods.

21 21. DEFENDANT, from time to time, failed to provide PLAINTIFF and the
22 CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226.

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

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

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

5 24. During the CLASS PERIOD, from time-to-time DEFENDANT required
6 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work,
7 including but not limited to, waiting for and taking shuttles from a parking lot in order to arrive
8 at DEFENDANT'S designated workplace, waiting in line to clock in for shifts, and spending time
9 under DEFENDANT's control for which he was not compensated. PLAINTIFF and other
10 members of the CALIFORNIA CLASS were from time to time required to perform the same post-
11 shift activities. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to
12 have to work while off-the-clock.

13 25. Additionally, PLAINTIFF and other members of the CALIFORNIA CLASS were
14 not compensated for their new employee training and orientation.

15 26. DEFENDANT directed and directly benefited from the uncompensated off-the-
16 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

17 27. DEFENDANT controlled the work schedules, duties, protocols, applications,
18 assignments, and employment conditions of PLAINTIFF and the other members of the
19 CALIFORNIA CLASS.

20 28. DEFENDANT was able to track the amount of time PLAINTIFF and the other
21 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
22 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
23 wages earned and owed for all the work they performed.

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

26 30. DEFENDANT's policies and practices deprived PLAINTIFF and the other
27 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
28 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the

1 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
2 hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

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

5 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
6 forfeited wages due them for all hours worked at DEFENDANT's direction, control and benefit
7 for the time spent working while off-the-clock. DEFENDANT's uniform policy and practice to
8 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked
9 in accordance with applicable law is evidenced by DEFENDANT's business records.

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

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

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

25 35. The second component of PLAINTIFF's and other CALIFORNIA CLASS
26 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
27 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
28 DEFENDANT. The non-discretionary bonus program provided all employees paid on an hourly

1 basis with bonus compensation when the employees met the various performance goals set by
2 DEFENDANT.

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

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

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

4 **G. Violations for Untimely Payment of Wages**

5 38. Pursuant to California Labor Code section 204, PLAINTIFF and the
6 CALIFORNIA CLASS members were entitled to timely payment of wages during their
7 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
8 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
9 meal period premium wages, and rest period premium wages within permissible time period.

10 **H. Unlawful Deductions**

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

15 **I. Unlawful Rounding Violations**

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

1 41. Further, the mutability of DEFENDANT’S timekeeping system and unlawful
2 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members’ time
3 being inaccurately recorded. As a result, from time to time, DEFENDANT’S unlawful rounding
4 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
5 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
6 duty meal break. Additionally, DEFENDANT’S unlawful rounding policy and practice caused
7 PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT
8 for more than ten (10) hours during a shift without receiving a second off-duty meal break.

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

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1 **J. CLASS ACTION ALLEGATIONS**

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

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

13 45. The members of the class are so numerous that joinder of all class members is
14 impractical.

15 46. Common questions of law and fact regarding DEFENDANT's conduct, including
16 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to
17 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
18 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
19 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
20 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
21 minimum wage and overtime, exist as to all members of the class and predominate over any
22 questions affecting solely any individual members of the class. Among the questions of law and
23 fact common to the class are:

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

47. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANT's conduct and actions alleged herein.

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

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

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

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

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

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

107. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code §§ 226)**

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

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

12 110. Cal. Labor Code § 226 provides that an employer must furnish employees with an
13 "accurate itemized" statement in writing showing:

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

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

4 111. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA
5 CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest
6 period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide
7 PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage
8 statements which failed to show, among other things, the accurate gross wages earned, net wages
9 earned, the total hours worked and all applicable hourly rates in effect during the pay period and
10 the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty
11 payments or missed meal and rest periods.

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

15 113. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
16 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
17 CLASS. These damages include, but are not limited to, costs expended calculating the correct
18 wages for all missed meal and rest breaks and the amount of employment taxes which were not
19 properly paid to state and federal tax authorities. These damages are difficult to estimate.
20 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
21 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
22 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
23 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
24 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
25 of the CALIFORNIA CLASS herein).

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

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

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

8 115. Cal. Lab. Code § 200 provides that:

9 As used in this article:

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

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

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

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

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

31 119. Cal. Lab. Code § 203 provides:

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

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

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

13 **NINTH CAUSE OF ACTION**

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

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

25 128. PLAINTIFF, and such persons that may be added from time to time who satisfy
26 the requirements and exhaust the administrative procedures under the Private Attorney General
27 Act, bring this Representative Action on behalf of the State of California with respect to himself
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1 and all non-exempt and exempt employees who worked for Defendant in California during the
2 time period of May 5, 2021 until the present (the "AGGRIEVED EMPLOYEES").

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

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

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1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

15 2. On behalf of the CALIFORNIA CLASS:

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

violation of Cal. Lab. Code § 226

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

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

4. On all claims:

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

DATED: July 11, 2022

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: July 11, 2022

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorney for PLAINTIFF

EXHIBIT 1



Client # 45001

May 5, 2022

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

REDZONE SECURITY INC.

c/o LegalZoom.com, Inc.

101 N. Brand Blvd., 11th Floor

Glendale, CA 91203

Sent via Certified Mail and Return Receipt No. 7021 2720 0000 9972 6846

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

Dear Sir/Madam:

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

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

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

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

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

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

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

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

Sincerely,

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 BRAD KLEIN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

BRAD KLEIN, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

REDZONE SECURITY INC., a California
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

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

8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802.

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant REDZONE SECURITY INC. (“DEFENDANT”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Riverside. DEFENDANT provides security services in the state of California, including Riverside County, where PLAINTIFF worked.

2. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANT by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the DEFENDANT 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.

3. The agents, servants, and/or employees of the DEFENDANT and each of them acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendant, and personally participated in the conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and all DEFENDANT are jointly and severally liable to PLAINTIFF and the other members of the

1 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
2 Defendant's agents, servants and/or employees.

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

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

14 6. PLAINTIFF was employed by DEFENDANT in California from September of
15 2021 to October of 2021 and at all times has been classified by DEFENDANT as a non-exempt
16 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
17 payment of minimum and overtime wages due for all time worked.

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

24 8. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
25 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
26 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to
27 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged
28 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained
and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA
CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction

1 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
2 other members of the CALIFORNIA CLASS who have been economically injured by
3 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
4 relief.

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

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

13 **JURISDICTION AND VENUE**

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

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

23 **THE CONDUCT**

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

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

15 **A. Meal Period Violations**

16 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
17 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
18 meaning the time during which an employee is subject to the control of an employer, including
19 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
20 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
21 without paying them for all the time they were under DEFENDANT's control. Specifically, as a
22 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
23 DEFENDANT required PLAINTIFF to work during what was supposed to be PLAINTIFF's off-
24 duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial
25 lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited
26 minimum wage and overtime wages by regularly working without their time being accurately
27 recorded and without compensation at the applicable minimum wage and overtime rates.
28

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

3 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
4 requirements and DEFENDANT's inadequate staffing practices, PLAINTIFF and other
5 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
6 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
7 other CALIFORNIA CLASS Members were required from time to time to perform work as
8 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
9 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
10 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
11 these employees were required by DEFENDANT to work ten (10) hours of work from time to
12 time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS
13 Members does not qualify for limited and narrowly construed "on-duty" meal period exception.
14 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS
15 Members were from time to time required to remain on premises, on duty, on call, and carry
16 cordless communication devices in order to receive and respond to communications received on
17 said devices. PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal
18 breaks without additional compensation and in accordance with DEFENDANT's strict corporate
19 policy and practice.

20 **B. Rest Period Violations**

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

1 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
2 other CALIFORNIA CLASS Members were, from time to time, required to remain on premises,
3 on duty, on call and carry cordless communication devices in order to receive and respond to
4 communications received on said devices. PLAINTIFF and other CALIFORNIA CLASS
5 Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous
6 work schedules and DEFENDANT's inadequate staffing, PLAINTIFF and other CALIFORNIA
7 CLASS Members were from time to time denied their proper rest periods by DEFENDANT and
8 DEFENDANT's managers.

9 **C. Unreimbursed Business Expenses**

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

21 18. In the course of their employment, DEFENDANT required PLAINTIFF and other
22 CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance
23 of their job duties as employees for DEFENDANT. But for the use of their own personal cell
24 phone, PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential
25 job duties. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other
26 CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in the
27 course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA
28

1 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related
2 to the use of their personal cellular phone, all on behalf of and for the benefit of DEFENDANT.

3 **D. Wage Statement Violations**

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

12 20. From time to time during the CLASS PERIOD, when PLAINTIFF and other
13 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
14 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
15 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
16 wage statements which failed to show, among other things, the total hours worked and all
17 applicable hourly rates in effect during the pay period and the corresponding amount of time
18 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
19 periods.

20 21. DEFENDANT, from time to time, failed to provide PLAINTIFF and the
21 CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226.

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

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

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

5 24. During the CLASS PERIOD, from time-to-time DEFENDANT required
6 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work,
7 including but not limited to, waiting for and taking shuttles from a parking lot in order to arrive
8 at DEFENDANT’S designated workplace, waiting in line to clock in for shifts, and spending time
9 under DEFENDANT’s control for which he was not compensated. PLAINTIFF and other
10 members of the CALIFORNIA CLASS were from time to time required to perform the same post-
11 shift activities. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to
12 have to work while off-the-clock.

13 25. Additionally, PLAINTIFF and other members of the CALIFORNIA CLASS were
14 not compensated for their new employee training and orientation.

15 26. DEFENDANT directed and directly benefited from the uncompensated off-the-
16 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

17 27. DEFENDANT controlled the work schedules, duties, protocols, applications,
18 assignments, and employment conditions of PLAINTIFF and the other members of the
19 CALIFORNIA CLASS.

20 28. DEFENDANT was able to track the amount of time PLAINTIFF and the other
21 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
22 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
23 wages earned and owed for all the work they performed.

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

26 30. DEFENDANT’s policies and practices deprived PLAINTIFF and the other
27 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
28 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the

1 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
2 hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

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

5 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
6 forfeited wages due them for all hours worked at DEFENDANT's direction, control and benefit
7 for the time spent working while off-the-clock. DEFENDANT's uniform policy and practice to
8 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked
9 in accordance with applicable law is evidenced by DEFENDANT's business records.

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

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

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

25 35. The second component of PLAINTIFF's and other CALIFORNIA CLASS
26 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
27 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
28 DEFENDANT. The non-discretionary bonus program provided all employees paid on an hourly

1 basis with bonus compensation when the employees met the various performance goals set by
2 DEFENDANT.

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

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

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

4 **G. Violations for Untimely Payment of Wages**

5 38. Pursuant to California Labor Code section 204, PLAINTIFF and the
6 CALIFORNIA CLASS members were entitled to timely payment of wages during their
7 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
8 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
9 meal period premium wages, and rest period premium wages within permissible time period.

10 **H. Unlawful Deductions**

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

15 **I. Unlawful Rounding Violations**

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

1 41. Further, the mutability of DEFENDANT’S timekeeping system and unlawful
2 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members’ time
3 being inaccurately recorded. As a result, from time to time, DEFENDANT’S unlawful rounding
4 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
5 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-
6 duty meal break. Additionally, DEFENDANT’S unlawful rounding policy and practice caused
7 PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT
8 for more than ten (10) hours during a shift without receiving a second off-duty meal break.

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

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1 **J. CLASS ACTION ALLEGATIONS**

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

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

13 45. The members of the class are so numerous that joinder of all class members is
14 impractical.

15 46. Common questions of law and fact regarding DEFENDANT's conduct, including
16 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to
17 accurately calculate the regular rate of pay for overtime compensation, failure to accurately
18 calculate the regular rate of compensation for missed meal and rest period premiums, failing to
19 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
20 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
21 minimum wage and overtime, exist as to all members of the class and predominate over any
22 questions affecting solely any individual members of the class. Among the questions of law and
23 fact common to the class are:

- 24 a. Whether DEFENDANT maintained legally compliant meal period policies and
25 practices;
26 b. Whether DEFENDANT maintained legally compliant rest period policies and
27 practices;
28

- 1 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
2 Members accurate premium payments for missed meal and rest periods;
- 3 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
4 Members accurate overtime wages;
- 5 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
6 Members at least minimum wage for all hours worked;
- 7 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
8 CLASS Members for required business expenses;
- 9 g. Whether DEFENDANT issued legally compliant wage statements;
- 10 h. Whether DEFENDANT committed an act of unfair competition by systematically
11 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
12 CLASS for all time worked;
- 13 i. Whether DEFENDANT committed an act of unfair competition by systematically
14 failing to record all meal and rest breaks missed by PLAINTIFF and other
15 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
16 of this work, required employees to perform this work and permits or suffers to
17 permit this work;
- 18 j. Whether DEFENDANT committed an act of unfair competition in violation of the
19 UCL, by failing to provide the PLAINTIFF and the other members of the
20 CALIFORNIA CLASS with the legally required meal and rest periods.

21 47. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
22 a result of DEFENDANT's conduct and actions alleged herein.

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

25 49. PLAINTIFF will fairly and adequately represent and protect the interests of the
26 CALIFORNIA CLASS Members.

27 50. PLAINTIFF retained able class counsel with extensive experience in class action
28 litigation.

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

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

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

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

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

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

107. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one

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

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

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code §§ 226)**

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

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

12 110. Cal. Labor Code § 226 provides that an employer must furnish employees with an
13 "accurate itemized" statement in writing showing:

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

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

4 111. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA
5 CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest
6 period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide
7 PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage
8 statements which failed to show, among other things, the accurate gross wages earned, net wages
9 earned, the total hours worked and all applicable hourly rates in effect during the pay period and
10 the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty
11 payments or missed meal and rest periods.

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

15 113. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
16 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
17 CLASS. These damages include, but are not limited to, costs expended calculating the correct
18 wages for all missed meal and rest breaks and the amount of employment taxes which were not
19 properly paid to state and federal tax authorities. These damages are difficult to estimate.
20 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
21 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
22 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
23 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
24 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
25 of the CALIFORNIA CLASS herein).

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1 **SEVENTH CAUSE OF ACTION**

2 **Failure To Pay Wages When Due**

3 **(Cal. Lab. Code §§ 203)**

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

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

8 115. Cal. Lab. Code § 200 provides that:

9 As used in this article:

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

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

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

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

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

31 119. Cal. Lab. Code § 203 provides:

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

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

~~121.~~ Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA CLASS whose employment has terminated, PLAINTIFF demand up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CLASS PERIOD and demand an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees For Required Expenses

(Cal. Lab. Code §§ 2802)

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

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

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

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

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

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

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

13 **PRAYER FOR RELIEF**

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

16 1. On behalf of the CALIFORNIA CLASS:

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

27 2. On behalf of the CALIFORNIA CLASS:

- 28 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth

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

- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
- e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On all claims:

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

DATED: May 5, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

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

DATED: May 5, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

SENDER: COMPLETE THIS SECTION

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

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 c/o LegalZoom.com, Inc.
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 Glendale, CA 91203



9590 9402 7412 2055 9628 67

2. Article Number (Transfer from service label)

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☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
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