

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

AUTONOMOUS, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS AUTONOMOUS LABS INC., a Delaware Corporation; and DOES 1-50, Inclusive,

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

MARQUAN NESBITT, an individual(s), on behalf of himself and on behalf of all persons similarly situated,

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 05 2022

BY NATHANIEL JOHNSON, DEPUTY

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es):
San Bernardino Superior Court - Civil Division
247 West Third Street
San Bernardino, CA 92415

CASE NUMBER
(Número de Caso) CIV SB 220474

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shani O. Zakay, Esq. SBN: 277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: APR 05 2022 Clerk, by Nathaniel Johnson, Deputy
(Fecha) *(Secretario)* *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

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

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other <i>(specify)</i> :	
- by personal delivery on *(date)*:

[SEAL]
COPY

VIA FAX

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Attorneys for Plaintiff MARQUAN NESBITT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN BERNARDINO**

MARQUAN NESBITT, an individual(s), on behalf of himself and on behalf of all persons similarly situated,

Plaintiff,

v.

AUTONOMOUS, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS AUTONOMOUS LABS INC., a Delaware 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

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 28 2022

BY 
NATHANIEL JOHNSON, DEPUTY

VIA FAX

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) UNLAWFUL DEDUCTIONS;
10) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 ET SEQ.]

DEMAND FOR A JURY TRIAL

Plaintiff MARQUAN NESBITT (“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 AUTONOMOUS, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS AUTONOMOUS LABS INC. (“DEFENDANT”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of San Bernardino.

2. DEFENDANT is an online retailer office furniture in the State of California, including San Bernardino County, where PLAINTIFF worked.

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

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

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

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

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

17 7. PLAINTIFF was employed by DEFENDANT in California from March 2017 to
18 September 2021, was at all times classified by DEFENDANT as a non-exempt employee paid in
19 part an hourly wage, commission-based compensation, non-discretionary bonuses, and entitled to
20 the legally required meal and rest periods and payment of minimum and overtime wages due for
21 all time worked.

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

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

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

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

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

17 **JURISDICTION AND VENUE**

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

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

27 **THE CONDUCT**

28 14. In violation of the applicable sections of the California Labor Code and the
requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS 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, double time, meal and rest period
7 premiums and sick pay at the correct regular rate of pay, failed to reimburse PLAINTIFF and
8 other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF
9 and the members of the CALIFORNIA CLASS with accurate itemized wage statements.
10 DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate
11 and full payment for all time worked as required by California law which allows DEFENDANTS
12 to illegally profit and gain an unfair advantage over competitors who comply with the law. To
13 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
14 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

15 **A. Meal Period Violations**

16 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
17 were 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, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work
21 without paying them for all the time they were under DEFENDANTS' control. Specifically, as a
22 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,
23 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
24 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work
25 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.
26 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result,
27 the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and
28 overtime wages by regularly working without their time being accurately recorded and without

1 compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform
2 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
3 time worked is evidenced by DEFENDANTS' business records.

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

23 **B. Rest Period Violations**

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

1 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
2 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
3 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
4 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
5 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or
6 on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
7 hour wages *in lieu* thereof. Further, from time to time, PLAINTIFF and other CALIFORNIA
8 CLASS Members were required to remain on duty, on call, and/or on the premises, and/or to carry
9 cordless communication devices and respond to communications received on said devices during
10 what was supposed to be their off-duty rest periods. As a result of their rigorous work schedules
11 and DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS
12 Members were from time to time denied their proper rest periods by DEFENDANTS and
13 DEFENDANTS' managers.

14 **C. Regular Rate Violation- Overtime, Double Time, Meal and Rest Period Premiums, and**
15 **Sick Pay**

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

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

1 20. The second component of PLAINTIFF’S and other CALIFORNIA CLASS
2 members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
3 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
4 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
5 basis with bonus compensation when the employees met the various performance goals set by
6 DEFENDANTS.

7 21. However, from-time-to-time, when calculating the regular rate of pay, in those pay
8 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
9 time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-
10 discretionary compensation, DEFENDANTS failed to accurately include the non-discretionary
11 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked
12 rather than just all non-overtime hours worked. As a matter of law, the compensation received
13 by PLAINTIFF and other CALIFORNIA CLASS members must be included in the “regular rate
14 of pay.” The failure to do so has resulted in a systematic underpayment of overtime and double
15 time compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other
16 CALIFORNIA CLASS members by DEFENDANTS. Specifically, California Labor Code
17 Section 246 mandates that paid sick time for non-employees shall be calculated in the same
18 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid
19 sick time, whether or not the employee actually works overtime in that workweek.
20 DEFENDANTS’ conduct, as articulated herein, by failing to include the incentive compensation
21 as part of the “regular rate of pay” for purposes of overtime, double time, paid meal and rest period
22 premium payments, and/or paid sick pay compensation was in violation of Cal. Lab. Code § 246
23 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or
24 204.

25 22. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
27 matter of company policy, practice and procedure, intentionally and knowingly failed to
28 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate

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

8 **D. Commission-Based Violations**

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

21 **E. Unlawful Rounding Violations**

22 24. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
23 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
24 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
25 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding and/or time
26 manipulation policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS
27 Members being undercompensated for all of their time worked. As a result, DEFENDANTS were
28 able to and did in fact unlawfully, and unilaterally manipulate and/or round the time recorded in

1 DEFENDANTS' timekeeping system for PLAINTIFF and the members of the CALIFORNIA
2 CLASS in order to avoid paying these employees for all their time worked, including the
3 applicable overtime compensation for overtime worked. As a result, PLAINTIFF and other
4 CALIFORNIA CLASS Members, from time to time, forfeited compensation for their time
5 worked by working without their time being accurately recorded and without compensation at the
6 applicable overtime rates.

7 25. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
8 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
9 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
10 and/or time manipulation policy and practice caused PLAINTIFF and CALIFORNIA CLASS
11 Members to perform work as ordered by DEFENDANTS for more than five (5) hours during a
12 shift without receiving an off-duty meal break. Additionally, DEFENDANTS' unlawful rounding
13 and/or time manipulation policy and practice caused PLAINTIFF and CALIFORNIA CLASS
14 Members to perform work as ordered by DEFENDANTS for more than ten (10) hours during a
15 shift without receiving a second off-duty meal break.

16 **F. Unreimbursed Business Expenses**

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

1 27. In the course of their employment, DEFENDANTS required PLAINTIFF and
2 other CALIFORNIA CLASS Members to use their personal cell phone to correspond and
3 coordinate tasks with other employees, use their personal funds to purchase necessary equipment
4 such as personal computers, and use their personal internet service to complete their tasks as a
5 result of and in furtherance of their job duties as employees for DEFENDANT. But for the use of
6 their own personal cell phones, personal funds for the purchase of personal computers, and
7 personal internet service, PLAINTIFF and the CALIFORNIA CLASS Members could not
8 complete their essential job duties, including but not limited to, communicating with clients,
9 facilitating purchases, and sending and receiving work-related communications from
10 DEFENDANTS. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and
11 other CALIFORNIA CLASS Members for their use of their personal cell phones, personal funds
12 for the purchase of personal computers, and personal internet service. As a result, in the course of
13 their employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS
14 Members incurred unreimbursed business expenses, but were not limited to, costs related to the
15 use of their personal cellular phones, costs related to the purchase of necessary equipment such
16 as personal computers, and costs related to the use of their personal internet service, all on behalf
17 of and for the benefit of DEFENDANT.

18 **G. Wage Statement Violations**

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

27 29. From time to time during the CLASS PERIOD, when PLAINTIFF and other
28 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed

1 meal and rest period premiums, or were not paid for all hours worked, failed to provide
2 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
3 Cal. Lab. Code § 226.

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

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

11 **H. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

12 32. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
13 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
14 CLASS for all hours worked.

15 33. During the CLASS PERIOD, from time-to-time DEFENDANTS required
16 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work pre-shift, post-
17 shift and during a scheduled meal break while off the clock. This resulted in PLAINTIFF and
18 other members of the CALIFORNIA CLASS to have to work while off-the-clock.

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

21 35. DEFENDANTS controlled the work schedules, duties, protocols, applications,
22 assignments, and employment conditions of PLAINTIFF and the other members of the
23 CALIFORNIA CLASS.

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

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

3 38. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
4 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
5 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
6 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
7 hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

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

10 40. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
11 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
12 for the time spent performing work before and after shifts, receiving and responding to work-
13 related communications on personal cell phones or personal computers outside of their scheduled
14 shifts, and working while clocked out for meal periods. Such tasks includes, but were not limited
15 to, receiving and responding to work-related communications and initiating and completing sales
16 of DEFENDANTS' products with DEFENDANTS' clients. DEFENDANTS' uniform policy and
17 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
18 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
19 records.

20 **I. Unlawful Deductions**

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

25 **J. CLASS ACTION ALLEGATIONS**

26 42. PLAINTIFF brings the First through Ninth Causes of Action as a class action
27 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current
28 and former non-exempt employees ("CALIFORNIA CLASS") during the period beginning four

1 years prior to the filing of the Complaint and ending on a date determined by the Court (“CLASS
2 PERIOD”).

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

9 44. The members of the class are so numerous that joinder of all class members is
10 impractical.

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

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

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

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

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

23 48. PLAINTIFF will fairly and adequately represent and protect the interests of the
24 CALIFORNIA CLASS Members.

25 49. PLAINTIFF retained able class counsel with extensive experience in class action
26 litigation.

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

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

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

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

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

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

14 Any person who engages, has engaged, or proposes to engage in unfair competition
15 may be enjoined in any court of competent jurisdiction. The court may make such
16 orders or judgments, including the appointment of a receiver, as may be necessary
17 to prevent the use or employment by any person of any practice which constitutes
18 unfair competition, as defined in this chapter, or as may be necessary to restore to
19 any person in interest any money or property, real or personal, which may have
20 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
21 17203).

22 58. By the conduct alleged herein, DEFENDANT has engaged and continues to
23 engage in a business practice which violates California law, including but not limited to, the
24 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
25 including Sections 201, 202, 203, 204, 221, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
26 1198, 2802, for which this Court should issue declaratory and other equitable relief pursuant to
27 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
28 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 110. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS
4 Members missed meal and rest breaks, or were paid inaccurate missed meal and rest period
5 premiums, or were not paid for all hours worked, DEFENDANTS failed to provide itemized wage
6 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
7 requirements of California Labor Code Section 226. In addition to the violations described above,
8 DEFENDANTS, from time to time, failed to provide PLAINTIFF and the CALIFORNIA CLASS
9 Members with wage statements that comply with Cal. Lab. Code § 226.

10 111. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
11 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
12 CLASS. These damages include, but are not limited to, costs expended calculating the correct
13 wages for all missed meal and rest breaks and the amount of employment taxes which were not
14 properly paid to state and federal tax authorities. These damages are difficult to estimate.
15 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
16 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
17 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
18 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
19 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
20 of the CALIFORNIA CLASS herein).

21 **SEVENTH CAUSE OF ACTION**

22 **Failure To Pay Wages When Due**

23 **(Cal. Lab. Code §§ 203)**

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

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

28 113. Cal. Lab. Code § 200 provides that:

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As used in this article:

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

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

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

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

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

117. Cal. Lab. Code § 203 provides:

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

118. 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.

119. 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

1 employees who terminated employment during the CLASS PERIOD and demand an accounting
2 and payment of all wages due, plus interest and statutory costs as allowed by law.

3 **EIGHTH CAUSE OF ACTION**

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

5 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

15 122. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal.
16 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
17 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
18 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
19 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
20 using their personal cell phones, personal funds for the purchase of personal computers, and
21 personal internet service all on behalf of and for the benefit of DEFENDANTS. Specifically,
22 PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANTS
23 to use their personal cell phones, personal funds for the purchase of personal computers, and
24 personal internet service to execute their essential job duties on behalf of DEFENDANTS.
25 DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and
26 the members of the CALIFORNIA CLASS for expenses resulting from using their personal
27 cellular phones, personal computers, and personal internet service for DEFENDANTS within the
28 course and scope of their employment for DEFENDANTS. These expenses were necessary to
complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to
assert any waiver of their expectation. Although these expenses were necessary expenses incurred

1 by PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANTS failed to
2 indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for these
3 expenses as an employer is required to do under the laws and regulations of California.

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

8 **NINTH CAUSE OF ACTION**

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

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

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

12 124. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
13 the allegations in the preceding paragraphs.

14 126. During the CLASS PERIOD, DEFENDANT regularly and consistently maintained
15 corporate policies and procedures designed to reduce labor costs by reducing or minimizing the
16 amount of compensation paid to its employees, including but not limited to, overtime compensation.

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

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

23 129. As a result of the conduct alleged above, DEFENDANTS unlawfully collected or
24 received from PLAINTIFF and the members of the CALIFORNIA CLASS' part of the wages
25 paid to their employees.

26 130. Wherefore, PLAINTIFF and the members of the CALIFORNIA CLASS demand
27 the return of all wages unlawfully deducted from the paychecks, including interest thereon,
28 penalties, reasonable attorneys' fees, and costs of suit pursuant to Labor Code §§ 225.5 and 1194.

TENTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Cal. Lab. Code §§2698 et seq.)

(Alleged by PLAINTIFF against all Defendants)

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

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

3. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals who are or previously were employed by DEFENDANT and classified as non-exempt employees in California during the time period of January 18, 2021 until the present (the "AGGRIEVED EMPLOYEES").

4. On January 18, 2022, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

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- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth 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 behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004;

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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: March 24, 2022

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: March 24, 2022

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #45301

January 18, 2022

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

AUTONOMOUS INC.
WHICH WILL DO BUSINESS IN CALIFORNIA AS AUTONOMOUS LABS INC.

c/o Incorporating Services, LTD.

7801 Folsom Blvd #202

Sacramento, CA 95826

Sent Via Certified Mail & Return Receipt No. 7021 2720 0000 9972 5344

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 223, 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 office represents Plaintiff MARQUAN NESBITT (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant AUTONOMOUS INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS AUTONOMOUS LABS INC. (“Defendant”). Plaintiff was employed by Defendant in California from March 2017 to September 2021 as a non-exempt employee, paid in part on an hourly basis, commission-based compensation, non-discretionary bonuses, and entitled to payment of all wages and the legally required meal and rest breaks. 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. Defendant further failed to properly calculate and pay Plaintiff and others similarly situated the correct regular rate for purposes of overtime, double time, meal and rest period premiums and sick pay. 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, 223, 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. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

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

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

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

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

Sincerely,



Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

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Attorneys for Plaintiff MARQUAN NESBITT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

MARQUAN NESBITT, an individual(s), on behalf of himself and on behalf of all persons similarly situated,

Plaintiff,

v.

AUTONOMOUS, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS AUTONOMOUS LABS INC., a Delaware 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; and
9) UNLAWFUL DEDUCTIONS

DEMAND FOR A JURY TRIAL

Plaintiff MARQUAN NESBITT (“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 AUTONOMOUS, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS AUTONOMOUS LABS INC. (“DEFENDANT”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of San Bernardino.

2. DEFENDANT is an online retailer office furniture in the State of California, including San Bernardino County, where PLAINTIFF worked.

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

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

1 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
3 Defendants' agents, servants and/or employees.

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

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

15 7. PLAINTIFF was employed by DEFENDANT in California from March 2017 to
16 September 2021, was at all times classified by DEFENDANT as a non-exempt employee paid in
17 part an hourly wage, commission-based compensation, non-discretionary bonuses, and entitled to
18 the legally required meal and rest periods and payment of minimum and overtime wages due for
19 all time worked.

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

26 9. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
27 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
28 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
herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained

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

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

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

15 **JURISDICTION AND VENUE**

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

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

25 **THE CONDUCT**

26 14. In violation of the applicable sections of the California Labor Code and the
27 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
28 matter of company policy, practice and procedure, intentionally, knowingly and systematically
failed to provide legally compliant meal and rest periods, failed to accurately compensate

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

13 **A. Meal Period Violations**

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

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

3 16. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
4 requirements and DEFENDANTS' 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 DEFENDANTS for more than five (5) hours during some shifts without receiving a
9 meal break. Further, DEFENDANTS 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 DEFENDANTS 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 duty, and on call. Further, from time to
16 time, PLAINTIFF and other CALIFORNIA CLASS Members were required to remain on duty,
17 on call, and/or on the premises, and/or to carry cordless communication devices and respond to
18 communications received on said devices during what was supposed to be their off-duty meal
19 periods. PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks
20 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
21 and practice.

22 **B. Rest Period Violations**

23 17. 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 DEFENDANTS' 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

1 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
2 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
3 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
4 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or
5 on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
6 hour wages *in lieu* thereof. Further, from time to time, PLAINTIFF and other CALIFORNIA
7 CLASS Members were required to remain on duty, on call, and/or on the premises, and/or to carry
8 cordless communication devices and respond to communications received on said devices during
9 what was supposed to be their off-duty rest periods. As a result of their rigorous work schedules
10 and DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS
11 Members were from time to time denied their proper rest periods by DEFENDANTS and
12 DEFENDANTS' managers.

13 **C. Regular Rate Violation- Overtime, Double Time, Meal and Rest Period Premiums, and**
14 **Sick Pay**

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

24 19. State law provides that employees must be paid overtime at one-and-one-half times
25 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were
26 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
27 employee's performance.
28

1 20. The second component of PLAINTIFF’S and other CALIFORNIA CLASS
2 members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
3 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
4 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
5 basis with bonus compensation when the employees met the various performance goals set by
6 DEFENDANTS.

7 21. However, from-time-to-time, when calculating the regular rate of pay, in those pay
8 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
9 time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-
10 discretionary compensation, DEFENDANTS failed to accurately include the non-discretionary
11 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked
12 rather than just all non-overtime hours worked. As a matter of law, the compensation received
13 by PLAINTIFF and other CALIFORNIA CLASS members must be included in the “regular rate
14 of pay.” The failure to do so has resulted in a systematic underpayment of overtime and double
15 time compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other
16 CALIFORNIA CLASS members by DEFENDANTS. Specifically, California Labor Code
17 Section 246 mandates that paid sick time for non-employees shall be calculated in the same
18 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid
19 sick time, whether or not the employee actually works overtime in that workweek.
20 DEFENDANTS’ conduct, as articulated herein, by failing to include the incentive compensation
21 as part of the “regular rate of pay” for purposes of overtime, double time, paid meal and rest period
22 premium payments, and/or paid sick pay compensation was in violation of Cal. Lab. Code § 246
23 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or
24 204.

25 22. In violation of the applicable sections of the California Labor Code and the
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
27 matter of company policy, practice and procedure, intentionally and knowingly failed to
28 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate

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

8 **D. Commission-Based Violations**

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

21 **E. Unlawful Rounding Violations**

22 24. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
23 place an immutable timekeeping system to accurately record and pay PLAINTIFF and other
24 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
25 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding and/or time
26 manipulation policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS
27 Members being undercompensated for all of their time worked. As a result, DEFENDANTS were
28 able to and did in fact unlawfully, and unilaterally manipulate and/or round the time recorded in

1 DEFENDANTS' timekeeping system for PLAINTIFF and the members of the CALIFORNIA
2 CLASS in order to avoid paying these employees for all their time worked, including the
3 applicable overtime compensation for overtime worked. As a result, PLAINTIFF and other
4 CALIFORNIA CLASS Members, from time to time, forfeited compensation for their time
5 worked by working without their time being accurately recorded and without compensation at the
6 applicable overtime rates.

7 25. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
8 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
9 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
10 and/or time manipulation policy and practice caused PLAINTIFF and CALIFORNIA CLASS
11 Members to perform work as ordered by DEFENDANTS for more than five (5) hours during a
12 shift without receiving an off-duty meal break. Additionally, DEFENDANTS' unlawful rounding
13 and/or time manipulation policy and practice caused PLAINTIFF and CALIFORNIA CLASS
14 Members to perform work as ordered by DEFENDANTS for more than ten (10) hours during a
15 shift without receiving a second off-duty meal break.

16 **F. Unreimbursed Business Expenses**

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

1 27. In the course of their employment, DEFENDANTS required PLAINTIFF and
2 other CALIFORNIA CLASS Members to use their personal cell phone to correspond and
3 coordinate tasks with other employees, use their personal funds to purchase necessary equipment
4 such as personal computers, and use their personal internet service to complete their tasks as a
5 result of and in furtherance of their job duties as employees for DEFENDANT. But for the use of
6 their own personal cell phones, personal funds for the purchase of personal computers, and
7 personal internet service, PLAINTIFF and the CALIFORNIA CLASS Members could not
8 complete their essential job duties, including but not limited to, communicating with clients,
9 facilitating purchases, and sending and receiving work-related communications from
10 DEFENDANTS. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and
11 other CALIFORNIA CLASS Members for their use of their personal cell phones, personal funds
12 for the purchase of personal computers, and personal internet service. As a result, in the course of
13 their employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA CLASS
14 Members incurred unreimbursed business expenses, but were not limited to, costs related to the
15 use of their personal cellular phones, costs related to the purchase of necessary equipment such
16 as personal computers, and costs related to the use of their personal internet service, all on behalf
17 of and for the benefit of DEFENDANT.

18 **G. Wage Statement Violations**

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

27 29. From time to time during the CLASS PERIOD, when PLAINTIFF and other
28 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed

1 meal and rest period premiums, or were not paid for all hours worked, failed to provide
2 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
3 Cal. Lab. Code § 226.

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

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

11 **H. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

12 32. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
13 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
14 CLASS for all hours worked.

15 33. During the CLASS PERIOD, from time-to-time DEFENDANTS required
16 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work pre-shift, post-
17 shift and during a scheduled meal break while off the clock. This resulted in PLAINTIFF and
18 other members of the CALIFORNIA CLASS to have to work while off-the-clock.

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

21 35. DEFENDANTS controlled the work schedules, duties, protocols, applications,
22 assignments, and employment conditions of PLAINTIFF and the other members of the
23 CALIFORNIA CLASS.

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

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

3 38. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
4 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
5 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
6 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
7 hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

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

10 40. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
11 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
12 for the time spent performing work before and after shifts, receiving and responding to work-
13 related communications on personal cell phones or personal computers outside of their scheduled
14 shifts, and working while clocked out for meal periods. Such tasks includes, but were not limited
15 to, receiving and responding to work-related communications and initiating and completing sales
16 of DEFENDANTS' products with DEFENDANTS' clients. DEFENDANTS' uniform policy and
17 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
18 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
19 records.

20 **I. Unlawful Deductions**

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

25 **J. CLASS ACTION ALLEGATIONS**

26 42. PLAINTIFF brings the First through Ninth Causes of Action as a class action
27 pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current
28 and former non-exempt employees ("CALIFORNIA CLASS") during the period beginning four

1 years prior to the filing of the Complaint and ending on a date determined by the Court (“CLASS
2 PERIOD”).

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

9 44. The members of the class are so numerous that joinder of all class members is
10 impractical.

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

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

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

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

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

23 48. PLAINTIFF will fairly and adequately represent and protect the interests of the
24 CALIFORNIA CLASS Members.

25 49. PLAINTIFF retained able class counsel with extensive experience in class action
26 litigation.

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

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

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

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

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

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

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

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

14 Any person who engages, has engaged, or proposes to engage in unfair competition
15 may be enjoined in any court of competent jurisdiction. The court may make such
16 orders or judgments, including the appointment of a receiver, as may be necessary
17 to prevent the use or employment by any person of any practice which constitutes
18 unfair competition, as defined in this chapter, or as may be necessary to restore to
19 any person in interest any money or property, real or personal, which may have
20 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
21 17203).

22 58. By the conduct alleged herein, DEFENDANT has engaged and continues to
23 engage in a business practice which violates California law, including but not limited to, the
24 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
25 including Sections 201, 202, 203, 204, 221, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
26 1198, 2802, for which this Court should issue declaratory and other equitable relief pursuant to
27 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
28 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **THIRD CAUSE OF ACTION**

17 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 110. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS
4 Members missed meal and rest breaks, or were paid inaccurate missed meal and rest period
5 premiums, or were not paid for all hours worked, DEFENDANTS failed to provide itemized wage
6 statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the
7 requirements of California Labor Code Section 226. In addition to the violations described above,
8 DEFENDANTS, from time to time, failed to provide PLAINTIFF and the CALIFORNIA CLASS
9 Members with wage statements that comply with Cal. Lab. Code § 226.

10 111. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
11 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
12 CLASS. These damages include, but are not limited to, costs expended calculating the correct
13 wages for all missed meal and rest breaks and the amount of employment taxes which were not
14 properly paid to state and federal tax authorities. These damages are difficult to estimate.
15 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
16 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
17 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
18 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
19 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
20 of the CALIFORNIA CLASS herein).

21 **SEVENTH CAUSE OF ACTION**

22 **Failure To Pay Wages When Due**

23 **(Cal. Lab. Code §§ 203)**

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

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

28 113. Cal. Lab. Code § 200 provides that:

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As used in this article:

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

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

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

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

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

117. Cal. Lab. Code § 203 provides:

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

118. 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.

119. 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

1 employees who terminated employment during the CLASS PERIOD and demand an accounting
2 and payment of all wages due, plus interest and statutory costs as allowed by law.

3 **EIGHTH CAUSE OF ACTION**

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

5 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

15 122. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal.
16 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
17 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
18 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
19 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
20 using their personal cell phones, personal funds for the purchase of personal computers, and
21 personal internet service all on behalf of and for the benefit of DEFENDANTS. Specifically,
22 PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANTS
23 to use their personal cell phones, personal funds for the purchase of personal computers, and
24 personal internet service to execute their essential job duties on behalf of DEFENDANTS.
25 DEFENDANTS' uniform policy, practice and procedure was to not reimburse PLAINTIFF and
26 the members of the CALIFORNIA CLASS for expenses resulting from using their personal
27 cellular phones, personal computers, and personal internet service for DEFENDANTS within the
28 course and scope of their employment for DEFENDANTS. These expenses were necessary to
complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to
assert any waiver of their expectation. Although these expenses were necessary expenses incurred

1 by PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANTS failed to
2 indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for these
3 expenses as an employer is required to do under the laws and regulations of California.

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

8 **NINTH CAUSE OF ACTION**

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

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

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

12 124. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
13 the allegations in the preceding paragraphs.

14 126. During the CLASS PERIOD, DEFENDANT regularly and consistently maintained
15 corporate policies and procedures designed to reduce labor costs by reducing or minimizing the
16 amount of compensation paid to its employees, including but not limited to, overtime compensation.

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

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

23 129. As a result of the conduct alleged above, DEFENDANTS unlawfully collected or
24 received from PLAINTIFF and the members of the CALIFORNIA CLASS' part of the wages
25 paid to their employees.

26 130. Wherefore, PLAINTIFF and the members of the CALIFORNIA CLASS demand
27 the return of all wages unlawfully deducted from the paychecks, including interest thereon,
28 penalties, reasonable attorneys' fees, and costs of suit pursuant to Labor Code §§ 225.5 and 1194.

PRAYER FOR RELIEF

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

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violation of Cal. Lab. Code § 226

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

3. On 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: January __, 2022

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

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

DATED: January __, 2022

ZAKAY LAW GROUP, APLC

By: _____

Shani O. Zakay
Attorney for PLAINTIFF

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Autonomous Inc. dba autonomous
 Labs, Inc.
 c/o Incorp. services, LTD
 7801 Folsom Blvd. #202
 Sacramento, CA 95826



9590 9402 7020 1225 2852 11

2. Article Number (Transfer from service label)

7021 2720 0000 9972 5344

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *J Lee*

- Agent
- Addressee

B. Received by (Printed Name)

2032 C-19

C. Date of Delivery

1/24/22

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

Nosbitt 1.18.22

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