

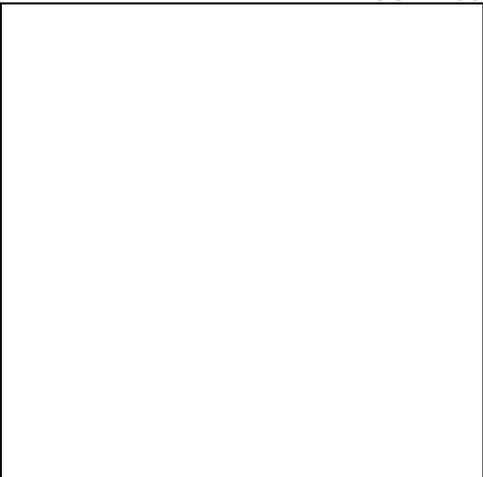
SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

CLEAN EARTH ENVIRONMENTAL SOLUTIONS, INC., a Delaware corporation; STERICYCLE, INC., a Delaware corporation; HARSCO CORPORATION, a Delaware corporation; and DOES 1-50, Inclusive,

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

DORICK MAHEIA, an individual, on behalf of himself and on behalf of all persons similarly situated,



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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es):
Los Angeles Superior Court - Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER: 22STCV24279
(Número del Caso):

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

Sherri R. Carter Executive Officer / Clerk of Court

DATE: 07/27/2022 Clerk, by G. Carini, 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

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. 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 (specify):	
4. by personal delivery on (date):



ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Dr., Ste 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
Sydney Castillo-Johnson (State Bar #343881)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com
scastillo@jcl-lawfirm.com

Attorneys for Plaintiff DORICK MAHEIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DORICK MAHEIA, an individual, on behalf of himself and on behalf of all persons similarly situated,

Plaintiff,

v.

CLEAN EARTH ENVIRONMENTAL SOLUTIONS, INC., a Delaware corporation; STERICYCLE, INC., a Delaware corporation; HARSCO CORPORATION, a Delaware corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: **22STCV24279**

CLASS ACTION COMPLAINT FOR:

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

VIOLATION OF CAL. LAB. CODE § 226;
7) FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN
VIOLATION OF CALIFORNIA LABOR
CODE §2802.

DEMAND FOR A JURY TRIAL

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

THE PARTIES

1. Defendant CLEAN EARTH ENVIRONMENTAL SOLUTIONS, INC. (“Defendant Clean Earth”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant STERICYCLE, INC. (“Defendant Stericycle”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. Defendant HARSCO CORPORATION (“Defendant Harsco”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

4. Defendant Clean Earth, Stericycle, and Harsco were the joint employers of PLAINTIFF as evidenced by the documents issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS” and/or “DEFENDANT.”

5. Defendants Clean Earth, Stericycle, and Harsco offer an array of specialty waste treatment and disposal, including but not limited to hazardous and non-hazardous waste, and recycling solutions in California, including in Los Angeles County where PLAINTIFF worked.

6. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANT by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this

1 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
2 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
3 alleges, that the DEFENDANT named in this Complaint, including DOES 1 through 50,
4 inclusive, (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible
5 in some manner for one or more of the events and happenings that proximately caused the injuries
6 and damages hereinafter alleged.

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

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

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

26 10. PLAINTIFF was employed by DEFENDANT in California from October of 2016
27 to January of 2022 and at all times was classified by DEFENDANT as a non-exempt employee,
28 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
minimum and overtime wages due for all time worked.

1 11. PLAINTIFF brings this Class Action on behalf of himself and a California class,
2 defined as all persons who are or previously were employed by Defendant Clean Earth and/or
3 Defendant Stericycle and/or Defendant Harsco in California and classified as non-exempt
4 employees (the “CALIFORNIA CLASS”) at any time during the period beginning November 28,
5 2020 and ending on the date as determined by the Court (the “CLASS PERIOD”). The amount
6 in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five
7 million dollars (\$5,000,000.00).

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

19 13. DEFENDANT’s uniform policies and practices alleged herein were unlawful,
20 unfair, and deceptive business practices whereby DEFENDANT retained and continues to retain
21 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

22 14. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
23 injunction enjoining such conduct by DEFENDANT in the future, relief for the named
24 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
25 injured by DEFENDANT’s past and current unlawful conduct, and all other appropriate legal and
26 equitable relief.

27
28 ///

1 **JURISDICTION AND VENUE**

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

6 16. Venue is proper in this Court pursuant to California Code of Civil Procedure,
7 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
8 the CALIFORNIA CLASS across California, including in this County, and committed the
9 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

10 **THE CONDUCT**

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

1 **A. Meal Period Violations**

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

16 19. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
17 requirements and DEFENDANT’s inadequate staffing practices, PLAINTIFF and other
18 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
19 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
20 other CALIFORNIA CLASS Members were required from time to time to perform work as
21 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
22 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
23 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
24 DEFENDANT required these employees to work ten (10) hours of work from time to time. The
25 nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS Members does
26 not qualify for limited and narrowly construed “on-duty” meal period exception. When they were
27 provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from
28 time to time, required to remain on premises, on duty, and on call. PLAINTIFF and other

1 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
2 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

3 **B. Rest Period Violations**

4 20. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
5 CALIFORNIA CLASS members were also required from time to time to work in excess of four
6 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
7 requirements and DEFENDANT's inadequate staffing. Further, for the same reasons these
8 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
9 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
10 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
11 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
12 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
13 other CALIFORNIA CLASS Members were, from time to time, required to remain on premises,
14 on duty and/or on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not
15 provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and
16 DEFENDANT's inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members
17 were from time to time denied their proper rest periods by DEFENDANT and DEFENDANT's
18 managers.

19 **C. Wage Statement Violations**

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

1 22. From time to time during the CLASS PERIOD, when PLAINTIFF and other
2 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
3 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
4 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate
5 wage statements which failed to show, among other things, the total hours worked and all
6 applicable hourly rates in effect during the pay period and the corresponding amount of time
7 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
8 periods.

9 23. In addition, DEFENDANT, from time to time, failed to provide PLAINTIFF and
10 the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code §
11 226.

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

16 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

17 25. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
18 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
19 CLASS for all hours worked.

20 26. During the CLASS PERIOD, from time-to-time DEFENDANT required
21 PLAINTIFF and other members of the CALIFORNIA CLASS to undergo COVID-19 health
22 screenings while off-the-clock. This resulted in PLAINTIFF and other members of the
23 CALIFORNIA CLASS to have to work while off-the-clock.

24 27. DEFENDANT directed and directly benefited from the uncompensated off-the-
25 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

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

1 29. DEFENDANT was able to track the amount of time PLAINTIFF and the other
2 members of the CALIFORNIA CLASS spent undergoing COVID-19 health screenings; however,
3 DEFENDANT failed to document, track, or pay PLAINTIFF and the other members of the
4 CALIFORNIA CLASS all wages earned and owed for all time spent under DEFENDANT's
5 control.

6 30. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
7 exempt employees, subject to the requirements of the California Labor Code.

8 31. DEFENDANT's policies and practices deprived PLAINTIFF and the other
9 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
10 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
11 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
12 hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

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

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

20 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
21 **Sick Pay**

22 34. From time-to-time during the CLASS PERIOD, DEFENDANT failed and
23 continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
24 members for their overtime and double time hours worked, meal and rest period premiums, and
25 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
26 due them for working overtime without compensation at the correct overtime and double time
27 rates, meal and rest period premiums, and sick pay rates. DEFENDANT's uniform policy and
28 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and

1 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
2 law is evidenced by DEFENDANT’s business records.

3 35. State law provides that employees must be paid overtime at one-and-one-half times
4 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS members were
5 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
6 employee’s performance.

7 36. The second component of PLAINTIFF’s and other CALIFORNIA CLASS
8 Members’ compensation was DEFENDANT’s non-discretionary incentive program that paid
9 PLAINTIFF and other CLASS Members incentive wages based on their performance for
10 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
11 basis with bonus compensation when the employees met the various performance goals set by
12 DEFENDANTS.

13 37. However, from time-to-time, when calculating the regular rate of pay, in those pay
14 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
15 time, paid meal and rest period premium payments, and/or sick pay, and earned this non-
16 discretionary bonus or incentive, DEFENDANTS failed to accurately include the non-
17 discretionary bonus compensation and/or incentive and/or shift differential paid as part of the
18 employees’ “regular rate of pay” and/or calculated all hours worked rather than just all non-
19 overtime hours worked. Management and supervisors described the incentive/bonus program to
20 potential and new employees as part of the compensation package. As a matter of law, the
21 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members
22 must be included in the “regular rate of pay.” The failure to do so has resulting in a systematic
23 underpayment of overtime and double time compensation, meal and rest period premiums, and
24 redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS Members by
25 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
26 for non-employees shall be calculated in the same manner as the regular rate of pay for the
27 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
28 actually works overtime in that workweek. DEFENDANT’s conduct, as articulated herein, by

1 failing to include the incentive compensation as part of the “regular rate of pay” for purposes of
2 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
3 recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

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

15 **F. Violations for Untimely Payment of Wages**

16 39. Pursuant to California Labor Code section 204, PLAINTIFF and the
17 CALIFORNIA CLASS members were entitled to timely payment of wages during their
18 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
19 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
20 meal period premium wages, and rest period premium wages within permissible time period.

21 **G. Unlawful Rounding Violations**

22 40. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place
23 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, DEFENDANT had in place an unlawful rounding policy and
26 practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being
27 undercompensated for all of their time worked. As a result, DEFENDANT was able to and did in
28 fact unlawfully, and unilaterally round the time recorded in DEFENDANT’S timekeeping system

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

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

14 **H. Unreimbursed Business Expenses**

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

26 43. In the course of their employment, DEFENDANT required PLAINTIFF and other
27 CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance
28 of their job duties as employees for DEFENDANT. But for the use of their own personal cell

1 phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential
2 job duties. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other
3 CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in the
4 course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA
5 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related
6 to the use of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

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

22 **I. CLASS ACTION ALLEGATIONS**

23 45. PLAINTIFF brings the First through Eighth Causes of Action as a class action
24 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
25 previously were employed by Defendant Clean Earth and/or Defendant Stericycle and/or
26 Defendant Harsco in California and classified as non-exempt employees ("CALIFORNIA
27 CLASS") during the period beginning November 28, 2020 and ending on a date determined by
28 the Court ("CLASS PERIOD").

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

7 47. The members of the class are so numerous that joinder of all class members is
8 impractical.

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

- 18 a. Whether DEFENDANT maintained legally compliant meal period policies and
19 practices;
- 20 b. Whether DEFENDANT maintained legally compliant rest period policies and
21 practices;
- 22 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
23 Members accurate premium payments for missed meal and rest periods;
- 24 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
25 Members accurate overtime wages;
- 26 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
27 Members at least minimum wage for all hours worked;
- 28 f. Whether DEFENDANT issued legally compliant wage statements;

- 1 g. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
- 2 CLASS Members for required business expenses;
- 3 h. Whether DEFENDANT committed an act of unfair competition by systematically
- 4 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
- 5 CLASS for all time worked;
- 6 i. Whether DEFENDANT committed an act of unfair competition by systematically
- 7 failing to record all meal and rest breaks missed by PLAINTIFF and other
- 8 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
- 9 of this work, required employees to perform this work and permits or suffers to
- 10 permit this work;
- 11 j. Whether DEFENDANT committed an act of unfair competition in violation of the
- 12 UCL, by failing to provide the PLAINTIFF and the other members of the
- 13 CALIFORNIA CLASS with the legally required meal and rest periods.

14 49. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
15 a result of DEFENDANT’s conduct and actions alleged herein.

16 50. PLAINTIFF’s claims are typical of the claims of the class, and PLAINTIFF has
17 the same interests as the other members of the class.

18 51. PLAINTIFF will fairly and adequately represent and protect the interests of the
19 CALIFORNIA CLASS Members.

20 52. PLAINTIFF retained able class counsel with extensive experience in class action
21 litigation.

22 53. Further, PLAINTIFF’s interests are coincident with, and not antagonistic to, the
23 interests of the other CALIFORNIA CLASS Members.

24 54. There is a strong community of interest among PLAINTIFF and the members of
25 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
26 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
27 sustained.

28

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

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

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

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

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

27 63. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
28 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
mandated meal and rest periods and the required amount of compensation for missed meal and
rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.

1 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
2 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

1 unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business
2 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

19 **SECOND CAUSE OF ACTION**

20 **Failure To Pay Minimum Wages**

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

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

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

26 74. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
27 for DEFENDANT'S willful and intentional violations of the California Labor Code and the
28

1 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate
2 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

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

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

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

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

15 79. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
16 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
17 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
18 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

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

25 81. As a direct result of DEFENDANT’s unlawful wage practices as alleged herein,
26 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
27 minimum wage compensation for their time worked for DEFENDANT.
28

1 82. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
3 failure to pay all earned wages.

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

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

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

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

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

7 **THIRD CAUSE OF ACTION**

8 **Failure To Pay Overtime Compensation**

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

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

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

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

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

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

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

1 92. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
2 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
3 they worked, including overtime work.

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

11 94. In committing these violations of the California Labor Code, DEFENDANT
12 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
13 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
14 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
15 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
16 regulations.

17 95. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
18 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
19 compensation for overtime worked.

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

28

1 97. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
3 constituting a failure to pay all earned wages.

4 98. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
5 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
6 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
7 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
8 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as
9 evidenced by DEFENDANT's business records and witnessed by employees.

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

15 100. DEFENDANT knew or should have known that PLAINTIFF and the other
16 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
17 DEFENDANT systematically elected, either through intentional malfeasance or gross
18 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
19 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
20 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

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

1 Members with a second off-duty meal period in some workdays in which these employees were
2 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
3 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
4 and in accordance with DEFENDANT's strict corporate policy and practice.

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

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

13 **FIFTH CAUSE OF ACTION**

14 **Failure To Provide Required Rest Periods**

15 **(Cal. Lab. Code §§ 226.7 & 512)**

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

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

20 108. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
21 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
22 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
23 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
24 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
25 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
26 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
27 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
28 CALIFORNIA CLASS Members were periodically denied their proper rest periods by

1 DEFENDANT and DEFENDANT’s managers. In addition, DEFENDANT failed to compensate
2 PLAINTIFF and CALIFORNIA CLASS Members for their rest periods as required by the
3 applicable Wage Order and Labor Code. As a result, DEFENDANT’s failure to provide
4 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
5 periods is evidenced by DEFENDANT’s business records.

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

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

14 **SIXTH CAUSE OF ACTION**

15 **Failure To Provide Accurate Itemized Statements**

16 **(Cal. Lab. Code §§ 226)**

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

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

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

- 22 a. Gross wages earned,
- 23 b. total hours worked by the employee, except for any employee whose compensation
24 is solely based on a salary and who is exempt from payment of overtime under
25 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
26 Commission,
- 27 c. the number of piece-rate units earned and any applicable piece rate if the employee
28 is paid on a piece-rate basis,

- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

113. From time to time during the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods. In addition, DEFENDANT, from time to time, failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab.

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

4 **SEVENTH CAUSE OF ACTION**

5 **Failure To Pay Wages When Due**

6 **(Cal. Lab. Code §§ 203)**

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

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

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

12 As used in this article:

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

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

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

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

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

119. Cal. Lab. Code § 203 provides:

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

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

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

15 **EIGHTH CAUSE OF ACTION**

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

17 **(Cal. Lab. Code §§ 2802)**

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

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

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

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

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

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

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

16 **PRAYER FOR RELIEF**

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

19 1. On behalf of the CALIFORNIA CLASS:

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
- e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On all claims:

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

DATED: July 27, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

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

DATED: July 27, 2022

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF